

THE THIRD SCHEDULE.

(See section 7.)

(A) BALANCE-SHEET OF THE ON THE 19

LIABILITIES.	Rs.	ASSETS.	Rs.
Life assurance fund—		Assets of life assurance fund as per separate balance-sheet (if any).	
Outstanding liabilities of life assurance fund.		Assets of annuity fund as per separate balance-sheet (if any).	
Annuity fund (if any) as per separate balance-sheet.		Assets of funds other than those shown in the above mentioned balance-sheets.	
Outstanding liabilities of annuity fund.		Mortgages on property within India	
Shareholders' capital paid up (if any)		Do. Do. out of India	
Profit and Loss account (if any)		Loans on public rates	
Funds contained in General Revenue Accounts (if any) [Schedule I (c).]		Do. life interests and reversions	
Other sums owing by the Company		Do. stocks and shares	
(Accounts to be specified and stated separately under each class of business.)		Do. company's policies within their surrender values	
		Do. personal security	
		Investments —	
		Deposit with the Comptroller General (securities to be specified)	
		Indian Government securities	
		British and Colonial Government securities	
		Foreign Government securities	
		Indian Municipal and Provincial securities	
		British and Colonial do. do. . . .	
		Foreign do. do. . . .	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government.	
		Ordinary stocks and shares of any Indian Presidency Bank.	
		Ordinary stocks and shares of any Railway in India.	
		Ordinary stocks and shares of any Railway out of India.	
		House property in India.	
		House property out of India.	
		Freehold and leasehold ground rents and rent charges in India	
		Life interests and reversions in India	
		Do. do. out of do. . . .	
		Other investments in India (to be specified)	
		Other investments out of India (to be specified).	
		Agents' balances	
		Outstanding premiums†	
		Do. interests, dividends and rents†	
		Interest accrued but not payable†	
		Bills receivable	
		Cash :—	
		On deposit	
		In hand and on current account	
		Other assets (to be specified)	
	Rs.		Rs.

† These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws, in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—The balance-sheet must state how the values of the Stock Exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 3.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 4.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

(B) BALANCE-SHEET OF THE LIFE ASSURANCE FUND _____ ON THE _____ 19 ,
 TO BE COMPLETED BY COMPANIES DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH
 THEY HAVE SEPARATE FUNDS.

LIABILITIES.	Rs.	ASSETS.	Rs.
Life assurance fund		Mortgages on property within India	
Claims admitted or intimated † but not paid		Do. do. out of India	
Other sums owing by the company † (under this class of business)		Loans on public rates	
		Do. life interests and reversions	
		Do. stocks and shares	
		Do. company's policies within their surrender values	
		Do. personal security	
		Investments—	
		Deposit with the Comptroller General (securities to be specified)	
		Indian Government securities	
		British and Colonial Government securities	
		Foreign Government securities	
		Indian Municipal and Provincial securities	
		British and Colonial do. do.	
		Foreign do. do.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government	
		Ordinary stocks and shares of any Indian Presidency Bank	
		Ordinary stocks and shares of any Railway in India	
		Ditto ditto out of India	
		House property in India	
		Ditto out of ditto	
		Freehold and leasehold ground rents and rent-charges in India	
		Life interests and reversions in India	
		Ditto ditto out of ditto	
		Other investments in India (to be specified)	
		Ditto out of ditto (to be specified)	
		Agents' balances	
		Outstanding premiums†	
		Do. interests, dividends and rents†	
		Interest accrued but not payable†	
		Bills receivable	
		Cash :—	
		On deposit	
		In hand and on current account	
		Other assets (to be specified)	
	Rs.		Rs.

† These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—A balance-sheet in the above form must be rendered in respect of the annuity fund if the investments of that fund are distinct from those of the life assurance fund.

NOTE 3.—The balance-sheet must state how the values of the Stock Exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 4.—A certificate must be appended hereto, signed by the same persons as signed the balance-sheet (Form A), and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable.

NOTE 5.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 6.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company, or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

THE FOURTH SCHEDULE.

(See sections 8 and 9.)

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE ———, TO BE MADE AND SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.
2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise; together with a statement of the manner in which policies on under average lives are dealt with.
3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given, at the rate of interest employed in the valuation, in respect of whole-life assurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of five years, respectively; with similar specimen policy values in respect of endowment assurance policies, according to age at entry, original term of policy and duration.
4. The rate or rates of interest assumed in the calculations.
5. The actual proportion of the annual premium income (if any), reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state how this provision is made.)
6. The consolidated revenue-account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where a statement under this schedule is deposited annually.)
7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company with the amount of surplus or deficiency. (These returns to be made in the forms annexed.)
8. The principles upon which the distribution of profits among the shareholders and policy-holders is made, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise, and the number of years' premiums to be paid before a bonus (a) is allotted, and (b) vests.
9. The results of the valuation, showing—
 - (1) the total amount of profit made by the company, allocated as follows:—
 - (a) among the policy-holders with immediate participation, and the number and amount of the policies which participated;
 - (b) among policy-holders with deferred participation, and the number and amount of the policies which participated;
 - (c) among the shareholders;
 - (d) to reserve funds, or other accounts;
 - (e) carried forward unappropriated;
 - (2) specimens of bonuses allotted to whole life assurance policies for Rs. 1,000 effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of 5 years respectively, together with the amounts apportioned under the various modes in which the bonus might be received; with similar specimen bonuses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

(Form referred to under Heading No. 6 in Fourth Schedule.)

Consolidated Revenue Account of the _____ for _____ years commencing _____ and ending _____.

Rs.		Rs.		Rs.	
Amount of life assurance fund at the beginning of the period		...	...	Claims under policies paid and outstanding :—	
Premiums	...	...	...	By death	...
Consideration of annuities granted	...	...	...	By maturity	...
Interest, dividends and rents	...	...	Rs.	Surrenders	...
Less income-tax thereon	...	...	...	Annuities	...
Other receipts (accounts to be specified)	...	...	...	Bonuses in cash	...
				" " reduction of premiums	...
				Commission	...
				Expenses of management	...
				Other payments (accounts to be specified)	...
				Amount of life assurance fund at the end of the period as per Third Schedule	...
		Rs.	...		Rs.

(Form referred to under Heading No. 7 in Fourth Schedule.)

Summary and valuation of the policies of the _____ as at _____ 19 _____

	PARTICULARS OF THE POLICIES FOR VALUATION.				VALUATION.			
	Number of Policies.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums.	Sums assured and bonuses.	Office yearly premiums.	Table, interest per cent.	Net liability.
ASSURANCES.								
I.—With immediate participation in profits.								
For whole term of life
Other classes (to be specified)
Extra premiums payable
II.—With deferred participation in profits.								
For whole term of life
Other classes (to be specified)
Extra premiums payable
Total assurances with profits
III.—Without participation in profits.								
For whole term of life
Other classes (to be specified)
Extra premiums
Total assurances without profits
Total assurances
Deduct re-assurances (to be specified according to class in a separate statement).
Net amount of assurances
Adjustments, if any (to be separately specified)
ANNUITIES ON LIVES.								
Immediate
Other classes (to be specified)
Total of the results

NOTE 1.—The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

NOTE 2.—Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of mortality, or at different rates of interest, also for business at other than European rates.

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside British India, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases respectively.

(Form referred to under Heading No. 7 in Fourth Schedule.)

Valuation Balance-Sheet of _____ as at _____ 19 _____

Dr.	Cr.	Rs.
To net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule).	By life assurance and annuity funds (as per Balance-sheet under Third Schedule) ... ..	...
To surplus, if any	By deficiency, if any ... ..	...
_____	_____	_____
_____	_____	_____

THE FIFTH SCHEDULE.

(See section 10.)

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY
BUSINESS OF THE ON THE
19 , TO BE SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances are to be given throughout.) Separate statements are to be furnished in the replies to all the headings under this Schedule for business at other than European rates.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date above-mentioned.
2. The total amount assured on lives for the whole term of life which are in existence at the date above-mentioned, distinguishing the portions assured with immediate profits, with deferred profits, and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated.
3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses in respect of the respective assurances mentioned under Heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.
4. The total amount assured under endowment assurances, specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate

profits, with deferred profits, and without profits separately returned.

5. The total amount assured under classes of assurance business, other than assurances dealt with under questions 2 and 4, distinguishing the sums assured under each class and stating separately the amount assured with immediate profits, with deferred profits, and without profits, and the total amount of reversionary bonuses.

6. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under Heading No. 5, distinguishing ordinary from extra premiums.

7. The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date above-mentioned.

8. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under Heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income-tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest.

THE SIXTH SCHEDULE.

*(See sections 24 and 25.)*RULES FOR VALUING ANNUITIES, LIFE POLICIES
AND LIABILITIES.*Rule for valuing an annuity.*

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct.

Rule for valuing a policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium as according to said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

Rule for valuing a liability.

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

W. H. VINCENT,

Secretary to the Government of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to provide for the regulation of Provident Insurance Societies was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th February 1912 :—

WE, the undersigned, Members of the Select Committee to which the Bill to provide for

- Papers No. 1.—From Chief Commissioner, Ajmer-Merwara, No. 2682-C., dated 25th November 1911; from Agent to Governor-General and Chief Commissioner in Baluchistan, No. 702-J., dated 21st November 1911; from Agent to Governor-General and Chief Commissioner, North-West Frontier Province, No. 2421-G., dated 23rd November 1911, and enclosure. the regulation of Provident Insurance Societies was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.
- Paper No. 2.—From Government, Burma, No. 584—2-P.-26, dated 27th November 1911.
- Papers No. 3.—From Government, Madras, No. 1516, dated 28th November 1911, and enclosures.
- Papers No. 4.—From Government, Punjab, No. 828, dated 4th December 1911, and enclosures.
- Papers No. 5.—From Government, Bombay, No. 11875, dated 20th December 1911, and enclosures.
- Papers No. 6.—From Government, Eastern Bengal and Assam, No. 1—L.-J., dated 3rd December 1911, and enclosures.
- Papers No. 7.—From Chief Commissioner, Central Provinces, No. 11—VIII-33-4, dated 4th January 1912, and enclosure.
- Paper No. 8.—From Directors, Bharat Laxmi Provident Company, No. 4512, dated 9th January 1912.
- Papers No. 9.—From Government, United Provinces, No. 5—VII-371, dated 10th January 1912, and enclosure.
- Paper No. 10.—From High Court, Calcutta, No. 98, dated 11th January 1912.
- Papers No. 11.—From Government, Bengal, No. 271, dated 18th January 1912, and enclosures.
- Papers No. 12.—From Government, Madras, No. 66, dated 18th January 1912, and enclosures.
- Papers No. 13.—From Government, Bengal, No. 365, dated 26th January 1912, and enclosure.
- Paper No. 14.—From Mr. R. N. Mitra.

2. We have set out *in extenso* in clause 2 such of the definitions of the Indian Life Assurance Companies Bill as are necessary for the purposes of this Bill. We think this arrangement is preferable as it makes the Bill a self-contained one and avoids legislation by reference.

3. We have amended the definition of "Provident Insurance Society" so as to admit of its scope being extended to such other forms of insurance other than on birth, marriage or death as the Local Government may prescribe. Our attention has been called to the existence of Societies which take risks on other events in human life, and it seems to us to be desirable that the Bill should be kept as flexible as possible in order to provide a means of bringing such Societies under control if it is found necessary to do so.

4. We have amended clause 3 by omitting any reference to the amount of share capital, as we consider that the proper basis of distinction between Life Assurance Companies and these Societies should be the character of the business done, and we have altered the clause

so as to make the undertaking to pay, not the actual payments made, the test which should be applied. We have also reduced the money limits of the payments and receipts specified in this clause, following in this respect the recommendations of the Bombay Chamber of Commerce. We have added to this clause a proviso which will permit a Society to reduce its life insurance business from the time the Bill comes into force in order to escape being made subject to the Indian Life Assurance Companies Bill.

5. We have redrawn *clause 5 (b)* with the object of making its meaning clearer and we have struck out sub-clause *(d) (2)*. While we recognise that a Society which cannot satisfy this provision may not ordinarily be in a satisfactory state, we consider that there may be circumstances in which this rule would operate harshly.

6. We have amended *clause 6* to make it clear that the application for registration should be to the Registrar for that part of British India in which the office of the Society is situate.

7. The provision made by us regarding the cancellation of the registry of a Society made it necessary to amend *clause 7*, and we have accordingly redrawn the clause.

8. We think it unnecessary to require that all the particulars specified in section 47 of the Indian Companies Act, 1882, should be furnished in the register of members prescribed by *clause 10* of the Bill, and we have amended the clause, merely requiring the names and addresses of the members of the Society to be recorded.

9. We have added a new clause (11) reproducing clause 18 of the Life Assurance Companies Bill, as we consider the provision a salutary one in the case of these Societies also.

10. We consider it desirable that the name of the Society should be publicly displayed at its office, and we have amended *clause 12* to provide for this.

11. We think it important that Government should receive information of the extent to which insurances are effected on lives other than the life of the person insuring. Such information will provide useful data for future consideration of the question whether further control, especially over child insurance, is desirable. We have added a new clause (15) to secure this object.

12. We have redrawn *clause 17*. The inquiry provided by that clause will now be made by the Registrar either of his own motion or on the application of members or policy-holders. The inquiry may be held by the Registrar himself or he may direct an inquiry to be held by an actuary. We have added safeguards against frivolous or malicious applications and have provided for the recovery of the cost of an inquiry made on application, and for the communication of the result of the inquiry to the Society and to any person who applied for such inquiry.

13. We have inserted a new clause (18) providing that after the inquiry has been held and the Registrar has given notice to the Society specifying the grounds for his proposed action, he may cancel the registry of the Society.

14. We have inserted a new clause (20) providing for appeals against the orders of the Registrar refusing or cancelling registry and against the order of a liquidator. The appeal is to the Court, and in this we follow the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893.

15. Following our amendment of the Life Assurance Companies Bill, we have by *clause 23* restricted the trial of offences against this Bill to certain Courts, and we have extended the rule-making power in *clause 24*.

16. We have added in *clause 25* a provision saving policies effected before the commencement of this Bill, and by *clause 26* we have granted a wide power to the Local Government to exempt Societies from the provisions of the Bill.

17. The publication ordered by the Council has been made as follows :—

<i>Gazette.</i>	<i>In English.</i>	<i>Date.</i>
Gazette of India		23rd September 1911
Fort Saint George Gazette		10th October 1911.
Bombay Government Gazette		5th October 1911.
Calcutta Gazette		1st November 1911.
United Provinces Gazette		4th November 1911.
Punjab Government Gazette		3rd November 1911.
Burma Gazette		18th November 1911.
Central Provinces Gazette		11th November 1911.
Eastern Bengal and Assam Gazette		15th November 1911.
Coorg District Gazette		2nd December 1911.
Sind Official Gazette		5th October 1911.
North-West Frontier Province Gazette		3rd November 1911.

In the Vernaculars.		
Province.	Language.	Date.
Madras	Tamil	7th November 1911.
	Telugu	
	Hindustani	
	Kanarese	
	Malayalam	
Bombay	Uriya	5th December 1911.
	Marathi	
	Gujarathi	
Bengal	Kanarese	23rd November 1911.
	Kaithi	
	Bengali	
	Uriya	
Burma	Burmese	30th October 1911.
Eastern Bengal and Assam	Bengali	31st October 1911.
Coorg	Bengali	9th November 1911.
	Kanarese	4th November 1911.
		11th November 1911.
		2nd December 1911.

18. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

W. H. CLARK.

SYED ALI IMAM.

CECIL W. N. GRAHAM.

M. B. DADABHOY.

N. SUBBA RAO.

BHUPENDRANATH BASU.

F. C. GATES.

R. N. MUDHOLKAR.

A. MEREDITH.

C. H. ARMSTRONG.

S. R. ARTHUR.

P. C. LYON.

R. C. C. CARR.

R. E. ENTHOVEN.

C. L. FYFFE.

The 26th February 1912.

THE PROVIDENT INSURANCE SOCIETIES BILL.

[AS AMENDED BY THE SELECT COMMITTEE.]

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[AS AMENDED BY THE SELECT COMMITTEE.]

The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill to provide for the regulation of Provident Insurance Societies.

WHEREAS it is expedient to provide for the regulation of Provident Insurance Societies; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Provident Insurance Societies Act, 1912; and
- (2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.
2. In this Act, unless there is anything repugnant in the subject or context,—
 - (1) 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;
 - (2) 'financial year' means each period of twelve months at the end of which the balance of the accounts of any *Provident Insurance Society* is struck, or, if no such balance is struck, then the calendar year;
 - (3) 'life assurance business' means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life;
 - (4) 'policy of assurance on human life' means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;
 - (5) 'policy-holder' means the person who for the time being is the legal holder of the policy for securing the contract with the *Provident Insurance Society*;
 - (6) where a *Provident Insurance Society* grants annuities upon human life, 'policy' includes the instrument evidencing the contract to pay such an annuity, and 'policy-holder' includes annuitant;
 - (7) 'prescribed' means prescribed by rules made under this Act;
 - (8) 'Provident Insurance Society' means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed: and

(9) 'Registrar' means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act.

3. Nothing in this Act shall apply to any *Provident Insurance Society* carrying on life assurance business which undertakes to pay on any life assurance policy or series of life assurance policies on any one life, an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees, or which receives or undertakes to receive by way of premium or contribution for life assurance on any one life any sum exceeding two hundred and fifty rupees where the said premiums or contributions are payable for one year or a limited number of years, or exceeding twenty-five rupees in any one year where the premiums or contributions are unlimited in number and terminable on death or the occurrence of an uncertain event:

Provided that in determining whether this Act applies to any provident insurance society, carrying on life assurance business, contracts entered into by the society before the commencement of this Act shall not be taken into consideration.

General.

4. No *Provident Insurance Society* shall receive insurable interest. any premium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution, or the wife, husband, child, parent, brother or sister of such person.
5. Every *Provident Insurance Society* shall by Provision to be made its rules—
 - (a) specify the object, name and registered office of the society;
 - (b) prescribe the proportion of the annual income of the society derived from premiums or contributions which may be disbursed for the expenses of management of the society;
 - (c) in the case of a society which by rule or practice divides any part of the funds thereof, provide for the payment of all debts due by the society existing at the time of division before any such division has taken place; and
 - (d) provide for any other matters which may be prescribed.
6. (1) Every *Provident Insurance Society* shall, Registration of Pro- within three months from the vident Insurance So- commencement of this Act, cieties. or, if established after the commencement of this Act, before it receives any premium or contribution, apply to the Registrar for that part of British India in which the office of the society is situate for registration under this Act, and shall deliver to him a copy of the rules of the society.

- (b) the matters in respect of which a society shall make rules;
 - (c) the form of any account, return or register required by this Act, and the manner in which any such account, return or register shall be verified;
 - (d) the fees to be charged for matters transacted under this Act and the manner in which the same are to be collected;
 - (e) the qualifications of auditors and actuaries under this Act;
 - (f) the manner in which any document required to be published by this Act shall be published; and
 - (g) the procedure to be followed by liquidators under this Act.
- (3) The power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted therein.

Miscellaneous.

25. No policy effected before the commencement of this Act with a Provident Insurance Society shall be deemed to be void by reason only that the insurance is not authorised by this Act.

26. The Local Government may, by notification in the local official Gazette, exempt any Provident Insurance Society or class of Provident Insurance Societies from all or any of the provisions of this Act, and subject to such conditions and restrictions as it thinks fit, exempt any Provident Insurance Society or class of Provident Insurance Societies from all or any of the provisions of this Act.

W. H. VINCENT,
Secretary to the Government of India.

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to Lunacy was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 28th February 1912:—

WE, the undersigned Members of the Select Committee to which the Bill to consoli-

- Paper No. 1.—From Maharajahdhiraja Bahadur of Burdwan, dated 26th October 1911.
- Papers No. 2.—From Agent to Governor General and Chief Commissioner in Baluchistan, No. 717-J., dated 24th November 1911; from Chief Commissioner, Coorg, No. 2810, dated 10th November 1911; from Chief Commissioner, Ajmer-Merwara, No. 2497-C., dated 7th November 1911; from Chief Commissioner and Agent to Governor General, North West Frontier Province, No. 2342-G., dated 13th December 1911.
- Papers No. 3.—From Government, United Provinces, No. 3214, dated 25th November 1911, and enclosures.
- Paper No. 4.—From Government, Burma, No. 855—9 K-35, dated 27th November 1911.
- Papers No. 5.—From Government, Punjab, No. 926, dated 5th December 1911, and enclosures.
- Paper No. 6.—From Government, United Provinces, No. 1547, dated 15th December 1911.
- Paper No. 7.—From Government, Eastern Bengal and Assam, No. 10-J., dated 5th October 1912.
- Paper No. 8.—From Chief Commissioner, Central Provinces, No. 74—V1-31-6, dated 11th January 1912.
- Papers No. 9.—From Government, Bengal, No. 159, dated 22nd January 1912, and enclosures.
- Papers No. 10.—From Government, Bombay, No. 639, dated 30th January 1912, and enclosures.
- Paper No. 11.—From Government, Madras, No. 111, dated 29th January 1912.
- Paper No. 12.—From High Court, Calcutta, No. 456, dated 5th February 1912.

date and amend the law relating to Lunacy was referred, have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have made minor changes in the wording of some of the definitions and for drafting purposes have added a definition of the term "relative" including in that expression any person related to another by blood, marriage or adoption. We have also enlarged the definition of "cost of maintenance" so as to include therein any expenditure incurred in removing a lunatic to and from an asylum.

3. We have added a proviso to clause 4 to permit of a person being received into an asylum as a voluntary boarder without a reception order. We regard this provision as one which is likely to be of considerable value. It is based on similar provisions in the English and Scotch law.

4. We have made two alterations in clause 5 which call for attention. In the first place we have provided that if either of the medical certificates which are filed with a petition is made by a relative, assistant or partner of the lunatic or of the petitioner, this fact must be stated in the petition. We have not thought it expedient to follow the English law in absolutely debarring particular relatives of the petitioner from granting medical certificates as we think that such a drastic provision might cause grave inconvenience in this country. We have therefore deleted clause 20 of the Bill. If, however, the doctors who certify to the insanity of the alleged lunatic are relatives or partners or assistants of the lunatic or the petitioner, this fact will be brought prominently to the notice of the Court in virtue of

clause 5(2) of the amended Bill. We have further provided that when any petition is made to a Magistrate for a reception order the Magistrate shall be furnished with information of any previous inquiries which have been made in any Court into the sanity of the alleged lunatic and the result (if any) of such inquiries.

5. Clause 6 of the Bill as it originally stood laid down that no petition should be presented by any person under the age of 21, and in this respect the Bill followed the English law. The law of majority in India, however, differs materially from the English law, and in view of this we have amended the Bill so as to provide that no person shall file a petition under this section unless he has attained the age of majority as determined by the law to which he is subject.

6. We have altered clause 7 and omitted clause 8 of the Bill in deference to the views of many Local Governments so as to make it incumbent on the Magistrate to examine personally an alleged lunatic in regard to whom a petition for a reception order has been made unless he summarily rejects the application or thinks it unnecessary or inexpedient to make such personal examination for reasons which he must record in writing. There are obviously cases in which such a personal examination might be dangerous or for other reasons undesirable.

7. We have also provided that when an inquiry as to the sanity of an alleged lunatic is pending before a Magistrate either on a petition or on information received from the Police the Magistrate may make such orders for the temporary custody of the lunatic as he thinks fit.

8. We have amended clause 9 of the Bill so as to give the Magistrate full discretion as to the persons to be present at an inquiry under this Part. We have at the same time retained the principle that such inquiries shall be held in private.

9. We have amended clause 11 of the Bill so as to make it the duty of a Magistrate to call for reasonable security for the payment of the cost of the maintenance of a lunatic admitted into an asylum on petition, and we have further provided that before any lunatic is sent to an asylum on a reception order founded on petition the Magistrate must be assured that there is some asylum of which the person in charge is willing to receive the lunatic. We have at the same time reserved full power to the Magistrate to commit dangerous lunatics to asylums without any restriction.

10. We have amended clause 13 so as to give the police discretionary power as to the arrest of wandering lunatics. We do not think that the Police should be bound to arrest such lunatics in all cases.

11. Clause 14 has been modified so as to leave it to the discretion of the Magistrate to send the lunatic to a medical officer instead of calling in the medical officer to examine the lunatic; further, under the clause as amended it will be unnecessary for the Magistrate to send the alleged lunatic for medical examination if, when such lunatic is produced before him, the Magistrate should think it unnecessary to proceed with the inquiry. We have further amended this clause so as to admit of a Magistrate sending a lunatic to a private asylum only when the person in charge of such asylum consents to receive such lunatic.

12. We have amended clause 17 so as to allow officers of whatever rank, in charge of Police-stations, in the town of Rangoon to arrest wandering and dangerous lunatics.

13. We have, by a new clause in the Bill, clause 21, made it incumbent on a Magistrate making a reception order to send a copy of such order forthwith to the asylum to which it is proposed to send the lunatic. The convenience of this amendment is we think clear.

14. We have framed a new clause 22, providing that Magistrates save in the particular case provided for in clause 85 shall only have authority to send lunatics to Government asylums within the province in which they exercise jurisdiction.

15. We have added a new clause 23 providing for the temporary detention of lunatics in suitable custody, pending their removal to an asylum.

16. Clause 23, which is clause 25 in the Bill as amended by us, has been simplified. We have provided that in every case there must be an order by the Court which made the inquisition.

17. We have added a proviso to clause 24 (now clause 26) making orders under this clause appealable to the superior Courts following in this matter the analogous provisions of clause 89.

18. We have added a new clause (34) to the Bill so as to provide for the immediate release of a lunatic admitted into an asylum on a reception order but subsequently found on inquisition by a Civil Court not to be insane.

19. We have amended clause 32 (now clause 35) which deals with the removal of lunatics from one asylum to another by providing that no lunatic admitted into an asylum on a reception order made on petition shall be so removed until notice has been given to the person on whose petition he was admitted.

20. We have amended, on the lines of the English Act, the provisions of the Bill regarding the re-arrest of escaped lunatics. These provisions are contained in clause 33, which is clause 36 in the Bill as amended by us. Under this clause as now amended a lunatic who remains at large for more than one month after his escape can only be arrested and admitted into an asylum if fresh proceedings are taken against him under this Act.

21. We have left the procedure to be adopted in proceedings in lunacy before the High Courts almost untouched save in the following details :—

- (1) In clause 40 we have provided for notice in inquisition proceedings upon any persons to whom in the opinion of the Court notice of any application under the Chapter should be given.
- (2) We have also eliminated all references to the Master as we are informed that there is no officer in this country of a corresponding position to a Master in Lunacy in England.
- (3) We have struck out certain clauses of the Bill which deal with matters of procedure now clearly covered by the Code of Civil Procedure.
- (4) The provisions for a new trial are as we are informed now obsolete; we have therefore excised them from the Bill.
- (5) We have further provided in clause 47 of the Bill as amended by us that a manager appointed by the High Court shall have power to lease any immoveable property for any term up to five years without the permission of the Court; we have in this respect assimilated the powers of a manager under the High Court to those of a manager under the District Court.

22. In clause 65(2) of the Bill as amended we have provided for a special finding by a District Court that a lunatic though of unsound mind is capable of managing himself and is not dangerous to himself or to others. We have in this clause followed the precedent of the English Act.

23. We have in clause 71 of the Bill as amended recast the provisions of clause 70 (4) and clause 71 relating to the appointment by the District Court of managers and guardians for lunatics. We have added to this clause a new proviso which incorporates the provisions of clause 82 which has been deleted from the Bill and have given to the District Courts a power similar to that possessed by the High Courts to apply a lunatic's property for his maintenance in case of temporary lunacy. We have also added a new sub-clause empowering the Court or the Collector to demand security from any manager of an estate of a lunatic.

24. Under the present law the legal heir of a lunatic cannot in any circumstances be appointed the guardian of his person. We are informed that in many cases the legal heir is the only available guardian and the most suitable person to whose care the lunatic can be entrusted. We have therefore altered the proviso to clause 71, making it a new clause 72, so as to admit of such an appointment when manifestly to the advantage of the lunatic.

25. We have amended clause 72 so as to make it clear that the Collector can only be directed to take charge of the person and estate of a lunatic if such Collector consents to do so.

26. We have amended clause 75 so as to allow a Court to annex conditions and restrictions to any permission granted to the manager of a lunatic to mortgage or lease immoveable property of such lunatic, and we have also empowered the Court to make or cause to be made such inquiries as it thinks fit before granting such permission.

27. We have amended clause 79 by providing that no relative of a lunatic shall sue a manager appointed under this Chapter for accounts without the leave of the District Court. The object of this amendment is to prevent managers from being harassed by frivolous suits.

28. We have made additions to clause 80 so as to make it clear that a Collector or a District Court may remove any manager of an estate of a lunatic or a guardian of the person of such lunatic and may appoint other suitable persons to replace them.

29. We have re-drafted the clause relating to appeals and definitely provided that any order made by a District Court under this Chapter is open to appeal to the High Court.

30. We have ascertained that in certain provinces local authorities are responsible for the maintenance of pauper lunatics in asylums, and we have therefore amended clause 87, now clause 86, to meet such cases and have further provided by an addition to clause 88, now clause 89, that such local authorities may realise any money expended on the maintenance of a lunatic by application to the Civil Court.

31. Clause 94 of the Bill has been severely criticised by certain Local Governments. We have now so amended it as to allow any person to receive lunatics in any charitable institution or in his own family or to keep one lunatic as a boarder in his private house, but have prohibited the detention of two or more lunatics in any establishment for the gain of the proprietor. We think it necessary to prohibit the detention of lunatics in any unlicensed institutions regularly kept for the reception of lunatics.

32. We have added a new clause to the Bill to provide for the reception in asylums in British India of lunatics sent from other parts of India in which His Majesty or the Governor General in Council exercises jurisdiction. We have modelled this clause on the corresponding section of the Prisons Act, 1900.

33. We have made material additions to the prescribed form of the Statement of Particulars which is filed with a petition for a reception order. These additions have been made on the recommendations of medical authorities.

34. The other alterations in the Bill call for no remarks.

35. The publication ordered by the Council has been made as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	23rd September 1911.
Port Saint George Gazette	10th October 1911.
Bombay Government Gazette	5th December 1911.
Calcutta Gazette	11th October 1911.
United Provinces Gazette	7th October 1911.
Punjab Government Gazette	6th October 1911.
Burma Gazette	21st October 1911.
Eastern Bengal and Assam Gazette	11th October 1911.
Central Provinces Gazette	7th October 1911.
Coorg District Gazette	1st November 1911.
Sind Official Gazette	5th October 1911.
North-West Frontier Province Gazette	6th October 1911.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	5th December 1911.
	Telugu	
	Hindustani	7th November 1911.
	Kanarese	5th December 1911.
Bombay	Malayalam	
	Marathi	23rd November 1911
	Gujarathi	
Bengal	Kanarese	
	Uriya	4th November 1911.
	Hindi	21st November 1911.
Burma	Bengali	28th November 1911.
	Burmese	4th November 1911.
Coorg	Kanarese	2nd January 1912.
Sindh	Sindhi	4th January 1912.

36. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

SYED ALI IMAM.
 R. H. CRADDOCK.
 SYED SHAMSUL HUDA.
 M. B. DADABHOY.
 BHUPENDRA NATH BASU.
 F. C. GATES.
 R. N. MUDHOLKAR.
 C. P. LUKIS.
 G. H. B. KENRICK.
 W. C. MADGE.
 W. H. VINCENT.
 R. C. C. CARR.
 S. R. ARTHUR.

The 26th February 1912.

THE INDIAN LUNACY BILL.

[AS AMENDED BY THE SELECT COMMITTEE.]

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[AS AMENDED BY THE SELECT COMMITTEE.]

[The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill to Consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy; It is hereby enacted as follows:—

PART I. PRELIMINARY.

CHAPTER I.

Short title and extent. 1. (1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas, and the Pargana of Spiti.

[Cf. s. 17, Act, 36 of 1858.]

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be established under the Indian High Courts Acts, 1861 to 1911, over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

24 & 25 Vict., c. 100, to 1 & 2 Geo. 5, c. 18.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum for lunatics established or licensed by Government:

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum.

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns:

(4) "criminal lunatic" means any person for whose confinement in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900:

7 of 1898, II of 1900, XXVI of 1858, s. 18.

(5) "lunatic" means an idiot or person of unsound mind:

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Local Government to perform the functions of a Magistrate under this Act:

(7) "medical officer" means a gazetted medical officer of Government and includes a medical practitioner declared by general or special order of the Local Government to be a medical officer for the purposes of this Act:

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Local Government to be a medical practitioner for the purposes of this Act:

(9) "prescribed" means prescribed by this Act or by rules made thereunder:

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition:

(11) "relative" includes any person related by blood, marriage or adoption: and

(12) "rule" means a rule made under this Act.

PART II. RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II.

RECEPTION OF LUNATICS.

4. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98: [Cf. s. 4 (1), Lunacy Act, 1890.]

Provided that any person in charge of an asylum may with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception Orders on petition.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper one of which certificates shall be from a medical officer. [Cf. s. 4 (2), Lunacy Act, 1890.]

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made a certified copy of the order made thereon shall be attached to the petition. [Cf. s. 7 (4), Lunacy Act, 1890.]

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the Local Government has by notification in the local official Gazette declared such area as an area in which reception orders may be made.

6. (1) The petition shall be presented, if possible, by whom Application by whom sible, by—

[Cf. s. 5, Lunacy Act, 1890.]

(a) the husband or wife of the alleged lunatic, or

(b) by any other relative of his.

(2) If the petition is not so presented, it shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject and has, within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner and the statement of prescribed particulars by the person making such statement.

[Cf. s. 13 of Lunacy Act, 1890.]

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

[Cf. s. 6 (3), Lunacy Act, 1890.]

8. Upon the presentation of the petition the Magistrate may make such order as he thinks fit for the detention of alleged lunatic pending enquiry, suitable custody of the alleged lunatic pending the conclusion of the inquiry.

[Cf. s. 6, Lunacy Act, 1890.]

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

[Cf. ss. 6(4), 7(1), Lunacy Act, 1890.]

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise, as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same and shall deliver or cause to be delivered to the petitioner a copy of such order.

[Cf. s. 7, Act 36 of 1858.]

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

Reception orders otherwise than on petition.

[Cf. s. 3, Act 11 of 1877.]

44 & 45 Vict., c. 58.

12. When any European who is subject to the provisions of the Army Act has been declared a lunatic in accordance with the provisions of the military regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any

asylum which has been duly authorized for the purpose by the Governor General in Council.

13. (1) Every officer in charge of a police station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person and if he thinks that there are grounds for proceeding further shall cause him to be examined by a medical officer and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum:

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement:

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him:

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may

[Cf. s. 4, first para., and s. 5, last para., Act 36, 1858; and s. 15, Lunacy Act, 1890.]

[Cf. s. 13(1), Lunacy Act, 1890, and s. 5, Act 36 of 1858.]

[Act 36 of 1858, s. 4.]

[S. 5, Act 36 of 1858. Cf. s. 13 of Lunacy Act of 1890.]

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, *if a medical officer gives a medical certificate with regard to such lunatic,* make a reception order for the admission of such lunatic into an asylum.

[S. 3A, Act
36 of 1858.]

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorize the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

[S. 6, Act 36
of 1858.]

17. All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency-towns or Rangoon by the Commissioner of Police ; and all duties which an officer in charge of a police-station is authorized or required to perform, may be performed in any of the Presidency-towns by an officer of the police-force not below the rank of an inspector.

Further provisions as to reception orders and medical certificates.

[Lunacy
Act, s. 29.]

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others ; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

S. 29,
Lunacy Act,
1890.]

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate, has personally examined the

alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases, not more than seven clear days before the date of the order.

(2) Where two medical certificates are required a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner

[Cf. s. 35
Lunacy Act
1890.]

or any person authorized by him, or in the case of an order not made upon petition, for the person authorized so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

22. Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into any asylum established by Government outside the Province in which the Magistrate exercises jurisdiction.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900, directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—

[Cf. s. 12,
Lunacy Act,
1890.]

(1) in the case of an inquisition under Chapter IV, on an order made by or under the authority of the High Court ;

[Cf. s. 8
(4), Act 36,
1858.]

(2) in the case of an inquisition under Chapter V, on an order made by the District Court.

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that, if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

[S. 12, Act
36 of 1858;
Cf. s. 34,
Lunacy Act,
1890.]

27. If, after the reception of any lunatic into any asylum, on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

[Act 36
of 1858, s. 2]

28. (1) The Local Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector General of Prisons (where such office exists) shall be a visitor *ex officio* of all the asylums within the limits of his jurisdiction.

[Ib., s. 3.]

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

30. (1) When any person is confined under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the asylum or any two of them, if he is confined in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is confined.

(2) The Local Government may empower the officer in charge of the jail in which such person may be confined to discharge all or any of the functions of the Inspector General under sub-section (1).

Discharge of lunatics.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum :

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be discharged therefrom in accordance with the military regulations in force for the time being or until the officer making the order applies for his transfer to the military authorities in view to his removal to England.

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him

to be discharged, and such discharge shall take place in accordance with the military regulations in force for the time being.

[Act 36 of 1858, s. 10.] **33.** When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith on the production of a certified copy of such finding discharge the alleged lunatic from the asylum.

[Act 36 of 1858, s. 17. C.]

Removal of lunatics.

35. (1) Any lunatic may be removed from any asylum established by Government, to any other asylum within the province in accordance with any general or special order of the Local Government, and to any other asylum in any part of British India in accordance with any general or special order of the Governor General in Council:

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) The Governor General in Council may make such general or special order as he thinks fit directing the removal of any person for whose confinement an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, from the place where he is for the time being confined, to any asylum, jail or other place of safe custody in British India.

[Act 36, 1858, s. 13. Lunacy Act, 1890, s. 85.]

Escape and re-capture.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum:

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom

a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

Inquisition.

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay

38. (1) The Court may upon application by Court may order inquisition as to persons alleged to be insane. order direct an inquisition of whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound mind and incapable of managing himself and his affairs. [S. 1, Act 34 of 1858.]

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

39. Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate General. [S. 2, Act 34 of 1858.]

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition. Notice of time and place of inquisition. [Cf. s. 3, *ibid.* and s. 4, Act 35 of 1858.]

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

41. (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic. [Cf. ss. 4, 5, *ibid.* and s. 5, Act 35 of 1858.]

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases. Rules respecting attendance and examination of females alleged to be lunatic. [Cf. s. 6, *ibid.* and s. 6, Act 35 of 1858.]

S. 8, Act
of 1858,
and Act 36
of 1858.]

43. (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

[Ib., s. 9.] 44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act.

Judicial powers over person and estate of lunatic.

[Cf. Lunacy
Act, 1890, s.
108 (2).]

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

[Ib., s. 18.] 47. The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist:

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic; or

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances, it thinks fit.

Management and administration.

49. The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable, or immoveable, of the lunatic, and whether in possession, reversion, remainder, or contingency be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the lunatic's debts or engagements;
- (2) the discharge of any incumbrance on his property;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;
- (5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

50. (1) The manager of the lunatic's estate shall, in the name and on behalf of the lunatic execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

[Act 34 of 1858, s. 21.] 52. (1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the *manager* of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

[Ib., s. 22.] 53. Where a lunatic has been engaged in business, the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the *manager* of the estate to sell and dispose of the same; and the moneys arising from such sale shall be applied in such manner as the Court may direct.

[Ib., s. 23.] 54. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the *manager* of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

[Ib., s. 21.] 55. If a lunatic is possessed of any immovable property situate beyond the local limits of the jurisdiction of the Court, which, by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management:

Provided that—

(1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a *manager* of the estate except of the immovable property which so subjects the proprietor as aforesaid:

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct:

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immovable property which so subjects the proprietor as aforesaid) the powers given by any other section.

[Ib., s. 27.] 56. (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner

it may, instead of appointing a *manager* of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders.

57. Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a *manager* of the estate of a lunatic, or in a trustee for him, and the *manager* dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the *manager* is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new *manager* or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

[Act. 34 of 1858, s. 25.] Power to order transfer of stock belonging to lunatic, in certain cases.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares, or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. (1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind

of an alleged lunatic; and if it is found that the unsoundness of mind has ceased the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

[Act 34 of 1858, s. 30.]

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

CHAPTER V.

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS.

Inquisition.

[Act 35 of 1858, s. 2.]

62. Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

[*Ib.*, s. 3.]

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public curator appointed under the Succession (Property Protection) Act, 1841 (*hereinafter referred to as the curator*), or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

[*Of. Ib.*, ss. 4 to 6.]

64. The provisions of sections 40, 41, and 42 shall regulate the proceedings of District Courts with regard to the matters to which they relate.

[*Ib.*, s. 57.]

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs but that he is capable of managing himself and is not dangerous to himself or to others.

[*Ib.*, s. 8.]

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

(2) On the completion of the inquisition the subordinate Court shall transmit the record of

its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates. [Act 35 of 1858, s. 9.]

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the estate of lunatic. [Ib., s. 10.]

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic: [Ib., s. 11.]

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the local Government or of such authority as it may appoint in this behalf.

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person: [Ib., s. 11.]

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit engaging duly to account for what he may receive in respect of the property of the lunatic.

72. *The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing considers that such an appointment is for the benefit of the lunatic.*

[Lunacy Act, 1890, s. 12.]

73. *A guardian of the person of a lunatic or a manager of his estate appointed under this chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.*

[Act 35 of 1858, s. 13.]

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

[Ib., s. 14.]

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic:

Provided that no manager so appointed shall without the permission of the Court—

(a) *mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic;*

(b) *lease any such property for a term exceeding five years.*

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

[Ib., s. 15, first para.]

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and

disbursed on account of the estate and the balance remaining in his hands.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trust Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic appointed by him and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and

[Act 35 of 1858, s. 15, second para.]

[Act 35 of 1858, s. 18.]

[Ib., s. 19.]

may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

82. (1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART VI.

MISCELLANEOUS.

CHAPTER IV.

ESTABLISHMENT OF ASYLUMS.

[Act 36 of 1858, s. 1.] 84. The Local Government may establish or license the establishment of asylums at such places as it thinks fit.

[Act 36 of 1858, s. 17A.] 85. The Governor General in Council may by any general or special order direct that Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province.

CHAPTER VII.

EXPENSES OF LUNATICS.

[Act 36 of 1858, s. 14.] 86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25 and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The Paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12. [Act 11 of 1877, s. 8.]

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf and any moveable property found on the person of the lunatic may be sold by the Magistrate and the proceeds thereof similarly applied. [Act 36 of 1858, s. 15, last para.]

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable, to his maintenance or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic. [Ibid, s. 15, first para.]

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person. [Ibid.]

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned. [Ibid, s. 15 second para.]

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act. [Ibid, s. 16.]

CHAPTER VIII.

RULES.

91. (1) Subject to the control of the Governor General in Council, the Local Government may make rules for all or any of the following purposes, namely:—

(a) to prescribe forms for any proceeding under this Act other than a proceed-

24 & 25
Vict., c. 104,
to 1 & 2
Geo. 5, c. 18.

ing before a High Court *which is or may hereafter be established under the Indian High Courts Acts, 1861 to 1911*;

- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;
- (c) to regulate the confinement, care, treatment and discharge of criminal lunatics;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;
- (e) to regulate the transfer of criminal lunatics to asylums;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;
- (g) to prescribe the asylums established by Government within the province to which lunatics from any area or any class of lunatics shall be sent;
- (h) to prescribe conditions subject to which asylums may be licensed;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section the Local Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

92. All rules made under section 91 shall be published in the local official Gazette and shall thereupon have effect as if enacted in this Act.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

Cf. s. 315, Penalty for improper lunacy Act, reception or detention of lunatic. 1890.]

93. Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

of 1898. 94. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

95. (1) When any sum is payable in respect of [Cf. s. 335, Lunacy Act, 1890.] pay, pension, gratuity or other similar allowance to any person by Government

and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) The Secretary of State for India in Council shall be discharged of all liability in respect of any amounts paid in accordance with this section.

96. Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or the Governor General in Council.

99. The Governor General in Council may make rules regulating the procedure for the reception and detention in asylums in British India of lunatics whose reception and detention are provided for by section 98.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, XXXVI of 1858.

for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act, as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

101. The enactments mentioned in the Second Schedule are repealed to the extent specified in the fourth column thereof.

SCHEDULE I.

FORMS.

(See section 96.)

FORM 1.

Application for Reception Order.

(See sections 5 and 6.)

In the matter of A. B.^[1], residing at _____,
by occupation _____, son of _____;
a person alleged to be a lunatic.

To _____ Presidency Magistrate, for
_____ [or District Magistrate of
_____ or Sub-divisional Magistrate of
_____ or Magistrate specially empowered under
Act of 1912 for _____].

The petition of C. D.^[1], residing at _____, by
occupation _____, son of _____ in the
town of _____ [or sub-division of
in the district of _____].

1. I am _____ [2] years of age.
2. I desire to obtain an order for the reception
of A. B. as a lunatic in the _____ asylum
of _____ situate at _____.

3. I last saw the said A. B. at _____ on
the _____ [4] day of _____.

4. I am the _____ [5] of the said A. B.
[or if the petitioner is not a relative of the
patient state as follows.]

I am not a relative of the said A. B. The
reasons why this petition is not presented by a
relative are as follows: [State them.]

The circumstances under which this petition is
presented by me are as follows: [State them.]

5. The persons signing the medical certificates
which accompany the petition are [6].

6. A statement of particulars relating to the
said A. B. accompanies this petition.

7. [If that is the fact.] An application for
an inquiry into the mental capacity of the said A.
B. was made to the _____ on the _____

_____ and a certified copy of the order
made on the said petition is annexed hereto
[Or if that is the fact.]

No application for an inquiry into the mental
capacity of the said A. B. has been made previous
to this application.

The petitioner therefore prays that a reception
order may be made in accordance with the fore-
going statement.

(Sd.) C. D.

[1] Full name, caste and titles.

[2] Enter the number of completed years. The peti-
tioner must be at least eighteen or twenty-one which-
ever is the age of majority under the law to which the
petitioner is subject.[3] Insert full description of the name and locality of
the asylum or the name, address and description of the
person in charge of the asylum.[4] A day within 14 days before the date of the
presentation of the petition is requisite.

[5] Here state the relationship with the patient.

[6] Here state whether either of the persons signing the
medical certificates is a relative, partner or assistant of the
lunatic or of the petitioner and, if a relative of either,
the exact relationship.

The statements contained or referred to in
paragraphs _____ are true to my knowledge; the
other statements are true to my information and
belief.

(Sd.) C. D.

Dated _____

Statement of particulars.

[If any of the particulars in this statement is
not known, the fact to be so stated.]

The following is a statement of particulars re-
lating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the
date hereof.Names of any near relatives to the patient
who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and
treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering
from phthisis or any form of tubercular disease.

Whether dangerous to others and in what way.

Whether any near relative (stating the relation-
ship) has been afflicted with insanity.Whether the patient is addicted to alcohol, or
the use of opium, ganja, charas, bhang, cocaine or
other intoxicant.

[The statements contained or referred to in
paras. _____ are true to my knowledge. The other
statements are true to my information and
belief.]

[Signature by person
making the statement.]

FORM 2.

Reception order on Petition.

(See sections 7, 10.)

I, the undersigned E. F., being a Presidency Magistrate of [or the District Magistrate of — or a Magistrate of the first class specially empowered by Government to perform the functions of a magistrate under Act of 1912] upon the petition of C. D. of [1] in the matter of [1] A. B., a lunatic, accompanied by the medical certificates of G. H., a medical officer, and of J. K., a medical practitioner [or medical officer], under the said Act, hereto annexed, hereby authorise you to receive the said A. B. into your asylum. And I declare that I have [or have not] personally seen the said A. B. before making this order.

(Sd.) E. F.

(Designation as above.)

To [2]

FORM 3.

Medical Certificate.

(See sections 18, 19.)

In the matter of A. B. of [3] in the town of [or the sub-division of] in the district of [4] an alleged lunatic.

I, the undersigned C. D., do hereby certify as follows:

1. I am a gazetted medical officer [or a medical practitioner a holder of [5] [or declared by Local Government to be declared by Government to be medical officer under Act of 1912] a medical practitioner under Act of 1912] and I am in the actual practice of the medical profession.

2. On the [6] day of 19 [7] at [8] in the [9] of [or the sub-division of] in the district of [10] [separately from any other practitioner.] [11], I personally examined the said A. B. and came to the conclusion that the said A. B. is a lunatic and a proper person to be taken charge of, and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.:—

(a) Facts indicating insanity observed by myself, viz.:—

(b) Other facts (if any) indicating insanity communicated to me by others, viz.:—
Here state the information and from whom.

(Sd.) C. D.

(Designation as above.)

[1] Address and description.

[2] To be addressed to the officer or person in charge of the asylum.

[3] Insert residence of patient.

[4] Insert qualification to practice medicine and surgery registrable in the United Kingdom.

[5] Insert place of examination.

[6] Omit this where only one certificate is required.

FORM 4.

Reception Order in case of Lunatic Soldier.

(See section 12.)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A. B. into your asylum.

(Sd.) E. F.

(Administrative Medical Officer.)

To [1]

FORM 5.

Reception Order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government).

(See sections 14, 15, 17.)

I, C. D., Presidency Magistrate of [or Commissioner of Police for] [or the District Magistrate of] [or the Sub-divisional Magistrate of] [or a Magistrate specially empowered by Government under Act of 1912] having caused A. B. to be examined by E. F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A. B. [describing him] is a lunatic who was wandering at large [or is a person dangerous by reason of lunacy] [or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the officer in charge of the asylum at

FORM 6.

Same when sent to a licensed asylum.

I, C. D., [as above down to "care and treatment"] and being satisfied with the engagement entered into in writing by G. H. of [here insert address and description] who has desired that the said A. B. may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorize you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the person in charge of the asylum at

[1] To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

FORM 7.

Bond on the making over of a lunatic to the care of relative or friend.

(See sections 14, 15, 17.)

Whereas A. B., son of , inhabitant of , has been brought up before C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the District Sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under Act 1912] and is a lunatic who is believed to be dangerous [or is deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care.

I, E. F., abovenamed hereby bind myself that on the said A. B. being made over to my care I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others: and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

FORM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(See section 33.)

Whereas A. B., son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the District Sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under Act of 1912] under section 14 [or section 15] of Act of 1912 and whereas I, E. F., son of , inhabitant of , have applied to the said magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care and custody:

I hereby bind myself that on the said A. B. being made over to my care and custody I will

have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

SCHEDULE II.

ENACTMENTS REPEALED.

(See section 101.)

1	2	3	4
Year.	No.	Short title.	Extent of Repeal.
1858	XXXIV	Lunacy (Supreme Courts) Act, 1858.	So much as has not been repealed.
"	XXXV	Lunacy (District Courts) Act, 1858.	Ditto.
"	XXXVI	Indian Lunatic Asylums Act, 1858.	Ditto.
1877	XI	Military Lunatics Act, 1877.	Ditto.
1886	XVIII	Indian Lunatic Asylums Act (1858) Amendment Act, 1886.	Ditto.
1889	XX	Indian Lunatic Asylums Act (1858) Amendment Act, 1889.	Ditto.
1894	XIII	Amending (Army) Act, 1894.	So much as relates to the Military Lunatics Act, 1877.
1898	V	Code of Criminal Procedure, 1898.	Section 471, sub-sections (2) and (3) and section 472.
1909	"	Amending (Army) Act, 1909.	So much as relates to the Military Lunatics Act, 1877.

W. H. VINCENT,

Secretary to the Government of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 22nd March 1912 :—

No. 2 OF 1912.

THE INDIAN COMPANIES BILL.

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SCHEDULES

A Bill to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other associations; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1 (1) This Act may be called the Indian Companies Act, 1912.

Short title, commencement and extent.

(2) It shall come into force on the first day of 19 ; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

2. In this Act, unless there is anything repugnant in the subject or context,—

[S. 285, Companies Act, 1908.]

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the schedule annexed to Act No. XIX of 1857 or in Table A in the first schedule annexed to the Indian Companies Act, 1882, or in Table A in the first schedule annexed to this Act:

VI of 1882.

[S. 285, Companies Act, 1908.]

(2) "company" means a company formed and registered under this Act or an existing company:

[*Ibid.*]

(3) "the Court" used in relation to a company means the Court having jurisdiction to wind up the company:

[*Ibid.*]

(4) "debenture" includes debenture stock:

[S. 3, Indian Companies Act, 1882.]

(5) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction:

[S. 285, Companies Act, 1908.]

(6) "director" includes any person occupying the position of a director by whatever name called:

[*Ibid.*]

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882:

[Cf. s. 108 (5), Companies Act, 1908; S. 3, Indian Companies Act, 1882.]

(8) "insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses:

(9) "memorandum" means the memorandum of association of a company as

originally framed or as altered in pursuance of the provisions of this Act:

(10) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and as respects the other provisions of this Act, prescribed by the Governor General in Council:

(11) "private company" means a company which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company:

Provided that, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be considered as a single member:

(12) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company:

(13) "the Registrar of Companies" or, when used in relation to registration of companies, "the Registrar" means a Registrar or Assistant Registrar performing under this Act the duty of registration of companies: and

(14) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

PART II.

CONSTITUTION AND INCORPORATION.

3. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Memorandum of Association.

[S. 2, Companies Act, 1908; Ss. 6 and 7 Indian Companies Act, 1882.]

4. Any seven or more persons (or, where the Mode of forming incorporated company. be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

[S. 3, Companies Act, 1908; S. 8, Indian Companies Act, 1882.]

Memorandum of company limited by shares. 5. In the case of a company limited by shares—

(1) the memorandum shall state—

- (i) the name of the company, with "Limited" as the last word in its name;
- (ii) the part of British India in which the registered office of the company is to be situate;
- (iii) the objects of the company;
- (iv) that the liability of the members is limited;
- (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;

- (2) no subscriber of the memorandum shall take less than one share;
- (3) each subscriber shall write opposite to his name the number of shares he takes.

[S. 4, Companies Act, 1908; S. 9, Indian Companies Act, 1882.]

Memorandum of company limited by guarantee. 6. In the case of a company limited by guarantee—

(1) the memorandum shall state—

- (i) the name of the company, with "Limited" as the last word in its name;
- (ii) the part of British India in which the registered office of the company is to be situate;
- (iii) the objects of the company;
- (iv) that the liability of the members is limited;

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;

(2) if the company has a share capital—

- (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (ii) no subscriber of the memorandum shall take less than one share;
- (iii) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of unlimited company. 7. In the case of an unlimited company—

(1) the memorandum shall state—

- (i) the name of the company;
- (ii) the part of British India in which the registered office of the company is to be situate;
- (iii) the objects of the company;

(2) if the company has a share capital—

- (i) no subscriber of the memorandum shall take less than one share;
- (ii) each subscriber shall write opposite to his name the number of shares he takes.

8. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

9. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

10 (1) A company shall not be registered by Name of company and a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

[S. 37, Indian Companies Act, 1882.]

[S. 5, Companies Act, 1908; S. 1, Indian Companies Act, 1882.]

[S. 6, Companies Act, 1908; S. 11, Indian Companies Act, 1882.]

[S. 12, *ibid.* [S. 7, Companies Act, 1908.]

[Ss. 43 and 38, *ibid.*; S. 8, Companies Act, 1908; Ss. 38 and 43, Indian Companies Act, 1882.]

[New.] (3) A company shall not be registered by a name which contains words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government, except where the Governor General in Council signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to the Government of India:

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

[S. 36, Indian Companies Act, 1882.] (4) Any company may, by special resolution and subject to the approval of the Local Government signified in writing, under the hand of one of the Secretaries to such Government, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be completely effected.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

[S. 9 (1), (2), Companies Act, 1908; S. 4, Act XII of 1895.] 11. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one part of British India to another, or with respect to the objects of the company, so far as may be required to enable it—

- [S. 4, Act II, 1895.] (a) to carry on its business more economically or more efficiently; or
- [S. 8, *ibid.*] (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.

[S. 5, Act of 1895.] (3) Before confirming the alteration the Court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and
- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection

in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

12. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper. [S. 9 (4), Companies Act, 1908; S. 6, Act XII of 1895.]

13. The Court shall, in exercising its discretion under sections 11 and 12, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interest of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

14. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. [S. 9 (6), Companies Act, 1908; Cf. s. 9 (1), Act XII of 1895.]

(2) Where the alteration involves a transfer of the registered office to a part of British India other than in that in which the office is at which the company is registered, a certified copy of the order confirming such change shall be delivered by the company to the registrar of companies in each of such parts, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the part from which such office is transferred shall send to the registrar for the other part all documents relating to the company registered in his office. [Cf. s. 9 (2) of Act XII of 1895.]

(3) The Court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the Court may think proper.

15. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 14, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, such alteration and order and all

proceedings connected therewith shall, at the expiration of such period of three months, become absolutely null and void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Articles of Association.

[S. 10, Companies Act, 1908; S. 37, Indian Companies Act, 1882.]

16. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

[S. 11, Companies Act, 1908; S. 38, Indian Companies Act, 1882.]

17. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

[S. 12, Companies Act, 1908; Cf. ss. 37 and 39, Indian Companies Act, 1882.]

18. Articles shall—
Form and signature of articles.

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

[S. 13, Companies Act, 1908; S. 76, Indian Companies Act, 1882.]

19. (1) Subject to the provisions of this Act alteration of articles and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

[Cf. s. 221, Indian Companies Act, 1882.]

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend

to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions.

20. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a contract on the part of each member, his heirs, executors and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

21. The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of British India in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

22. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

23. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A declaration, made before a Justice of the Peace or a District Judge by a legal practitioner engaged in the formation of a company or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

24. (1) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

Copies of memorandum and articles to be given to members.

[S. 14, Companies Act, 1908; S. 39, Indian Companies Act, 1882.]

[S. 15, Companies Act, 1908; S. 40, Indian Companies Act, 1882.]

[S. 16, Companies Act, 1908; S. 41, Indian Companies Act, 1882.]

[S. 17, Companies Act, 1908; Ss. 41 and 236, Indian Companies Act, 1882.]

[S. 18, Companies Act, 1908; S. 42, Indian Companies Act, 1882.]

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding twenty rupees.

Associations not for Profit.

[S. 20, Companies Act, 1908; S. 26, Indian Companies Act, 1882.]

25. (1) Where it is proved to the satisfaction of the Local Government that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A license by the Local Government under this section may be granted on such conditions and subject to such regulations as the Local Government thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Local Government so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.

(4) A license under this section may at any time be revoked by the Local Government, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Companies limited by Guarantee.

[S. 21, Companies Act, 1908.]

26. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

27. (1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company, and shall not be of the nature of immoveable property.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

28. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

29. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

30. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) the date at which each person was entered in the register as a member;

(iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

31. (1) Every company having a share capital shall once at least in every year make a list of all persons who on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

- [New.] (a) the amount of the share capital of the company, and the number of the shares into which it is divided ;
- (b) the number of shares taken from the commencement of the company up to the date of the return ;
- (c) the amount called up on each share ;
- (d) the total amount of calls received ;
- (e) the total amount of calls unpaid ;
- [S. 49, Act VI of 1882.] (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;
- (g) the total number of shares forfeited ;
- [Ditto.] (h) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;
- (i) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;
- (j) the number of shares or amount of stock comprised in each share-warrant ;
- [New.] (k) the names and addresses of the persons who at the date of the return are the directors of the company ; and
- (l) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after the fourteenth day aforesaid, and the company shall forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company together with a certificate from such manager or secretary that the requirements of this section have been complied with.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

32. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar. [S. 27, Companies Act, 1908 ; s. 53, Indian Companies Act, 1882.]

33. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in [S. 28, Companies Act, 1908 ; s. 29, Indian Companies Act, 1882.]

the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

34. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer. [S. 29, Companies Act, 1908 ; s. 46, Indian Companies Act, 1882.]

35. (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member *gratis*, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection. [S. 30, Companies Act, 1908 ; s. 55, Indian Companies Act, 1882.]

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of two annas for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding 50 rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and any Judge of a High Court may by order compel an immediate inspection of the register.

36. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year. [S. 31, Companies Act, 1908 ; s. 56, Indian Companies Act, 1882.]

Power of Court to rectify register. 37. (1) If— [S. 32, Companies Act, 1908 ; s. 58, Indian Companies Act, 1882.]

- (a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company ; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member ;

the person aggrieved or any member of the company, or the company, may apply to the High Court for the place in which the registered office of the company is situate, for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decisions on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in section 100 of that Code.

V of 1909.

[S. 31 (4), Companies Act, 1908; s. 59, Indian Companies Act, 1882.]

38. In the case of a company required by this Act to send a list of its members to the registrar of companies, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be given to the registrar.

[S. 33, Companies Act, 1908; s. 60, Indian Companies Act, 1882.]

39. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

40. A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any British register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued, and the registrar shall record such notice.

[S. 35, Companies Act, 1908; Cf. s. 3 (3), (4), (5), Act IV of 1900.]

41. (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of

its British register, and the duplicate shall for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to some other British register kept by the company or to the principal register.

(6) Subject to the provisions of this Act or any rules made thereunder, any company may, by its articles, make such provisions as it may think fit respecting the keeping of British registers.

42. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

43. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

44. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

45. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

46. On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the share or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(i) the fact of the issue of the warrant;

[S. 37 (1), Companies Act, 1908; s. 30, Indian Companies Act, 1882.]

Issue of share-warrants to bearer.

Issue of share-warrants to bearer.

Effect of share-warrant.

Registration of name of bearer of share-warrant.

Position of bearer of share-warrant.

Entries in register when share-warrant issued.

[S. 37 (2), Companies Act, 1908; s. 31, Indian Companies Act, 1882.]

[S. 37 (3), Companies Act, 1908; s. 32, Indian Companies Act, 1882.]

[S. 37 (4), Companies Act, 1908; s. 33, Indian Companies Act, 1882.]

[S. 37 (5), Companies Act, 1908; s. 34, Indian Companies Act, 1882.]

- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and
- (iii) the date of the issue of the warrant.

[S. 37 (6), Companies Act, 1908; s. 47, Indian Companies Act, 1882.]

47. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

[S. 39, Companies Act, 1908; s. 27, Indian Companies Act, 1882.]

48. A company, if so authorised by its articles, may do any one or more of the following things, namely.—

- (1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares.
- (2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up;
- (3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[S. 41, Companies Act, 1908, ss. 12, 23, 24, 25 & 26, Indian Companies Act, 1882.]

49. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows, (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

[S. 12, Indian Companies Act, 1882.]

[S. 24, *ibid.*]

[S. 23, *ibid.*]

(2) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

[S. 25, *ibid.*]

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(4) If a company makes default in complying with the requirement of sub-section (3) it shall

be liable to a fine not exceeding twenty rupees for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

50. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock,

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

or reconverted stock into shares, it shall within fifteen days of the consolidation, division, conversion or reversion, give notice to the registrar of the same, specifying the share consolidated, divided or converted, or the stock reconverted.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

51. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

52. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital, within fifteen days after the passing of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

53. (1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share

Reorganization of share capital.

[S. 45, Companies Act, 1908; New.]

capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

[S. 46, Companies Act, 1908; *Cf. ss. 18, 249 Indian Companies Act, 1882.*]

54. (1) No company limited by shares shall have power to buy its own shares.

(2) Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) A special resolution under this section is in this Act called a resolution for reducing share capital.

[S. 47, Companies Act, 1908; s. 15 (part), Indian Companies Act, 1882.]

55. Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

[S. 48, Companies Act, 1908; *Cf. ss. 14, 15, Indian Companies Act, 1882.*]

56. On and from the date of the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

57. (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction

[S. 49 (1) (2), Companies Act, 1908; s. 16, Indian Companies Act, 1882.]

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

58. Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

- (i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;
- (ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

[S. 49 (3), Companies Act, 1908; s. 17, Indian Companies Act, 1882.]

59. The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

[S. 50, Companies Act, 1908; part of s. 5, Indian Companies Act, 1882.]

60. (1) The Registrar of companies, on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to

[S. 51, Companies Act, 1908; s. 18, Indian Companies Act, 1882.]

be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

[S. 52, Companies Act, 1908; C/, ss. 19 and 21, Indian Companies Act, 1882.]

61. (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

[S. 53, Companies Act, 1908; part of ss. 19 and 20, Indian Companies Act, 1882.]

62. (1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list

(2) Nothing in this section shall affect the rights of the contributories among themselves.

63. If any director, manager or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company abets any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

[S. 54, Companies Act, 1908; s. 22, Indian Companies Act, 1882.]

64. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

[S. 55, Companies Act, 1908; part of s. 15, Indian Companies Act, 1882.]

65. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

[New; s. 57, Companies Act, 1908.]

66. (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

[New; s. 58, Companies Act, 1908.]

67. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the

creased shall be capable of being called up except in the event and for the purposes of the company being wound up ;

- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

[New ; s. 59, Companies Act, 1908.]

68. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

[S. 60, Companies Act, 1908; part of s. 7, Indian Companies Act, 1882.]

69. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager or proposer makes default in adding such a statement or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

[S. 61, Companies Act, 1908; part of s. 76, Indian Companies Act, 1882.]

70. (1) A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) From the date of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the passing of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding twenty rupees for each copy in respect of which default is made; and every director or manager of the company, who knowingly and wilfully authorizes or permits the default, shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

71. (1) Every company shall have a registered office to which all communications and notices may be addressed. [S. 62, Companies Act, 1908; ss. 63, 64, Indian Companies Act, 1882.]

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the Registrar of Companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

72. Every limited company— [S. 63 (1), Companies Act, 1908; s. 65, Indian Companies Act, 1882.]

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible in the English language, and also, if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in that place;

(b) shall have its name engraven in legible characters in such language or languages on its seal;

(c) shall have its name mentioned in legible characters in the English language in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

73. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company, who knowingly and wilfully authorizes or permits the default, shall be liable to the like penalty. [S. 63 (2), Companies Act, 1908; s. 66, Indian Companies Act, 1882.]

(2) If any director, manager or officer of a limited company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or

goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

[S. 64, Companies Act, 1908; part of s. 74, Indian Companies Act, 1882.] **74.** (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding one thousand rupees.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

[S. 74, Indian Companies Act, 1882.] **75.** Once at least in every year, every company shall make out a balance-sheet which shall be laid before the company at a general meeting within twelve months after the company has been registered, and once at least in every year afterwards within fifteen months after the submission of the last preceding balance-sheet.

[S. 74, Indian Companies Act, 1882.] **76.** (1) The balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to Table A in the First Schedule or as near thereto as circumstances admit.

[S. 113 (3), Companies Act, 1908.] (2) The balance-sheet shall be audited by the auditors of the company as hereinafter provided, and the auditors' report shall be attached thereto or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any shareholder.

[S. 113 (5)(b), Companies Act, 1908.] **77.** (1) In the case of a banking company the balance-sheet shall be authenticated of signed by the secretary or manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors.

[S. 113 (3), Companies Act, 1908.] (2) In the case of any other company the balance-sheet shall be signed on behalf of the board by two directors of the company or, if there is only one director, by that director.

[S. 26(3), Companies Act, 1908; s. 74, Indian Companies Act, 1882.] **78.** (1) After the balance-sheet has been laid before and adopted by the company at a general meeting, a copy thereof and of the auditor's report thereon signed by the manager or by the secretary of the company shall be forwarded to the Registrar of companies

at the same time as the annual list of members and summary prepared in accordance with the requirements of section 31.

(2) If a company makes default in complying with the requirements of this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the same penalty as is provided by section 31 for a default in complying with the provisions of that section.

79. If any copy of a balance-sheet which has not been signed as required by section 77 is issued, circulated or published, or if any copy of a balance-sheet is issued, circulated or published without either having a copy of the auditor's report attached thereto or containing such reference to that report as is required by section 76, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to one thousand rupees.

[S. 113 (3), Companies Act, 1908.] **80.** Any shareholder shall be entitled to be furnished with a copy of the balance-sheet and the auditors' report at a charge not exceeding two annas for every hundred words.

[S. 65, Companies Act, 1908; s. 75, Indian Companies Act, 1882.] **81.** (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and manager, and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid;
- (c) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in

hand and an account or estimate of the preliminary expenses of the company ;

(d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company ;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part V for winding-up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Com-
Act,

82. (1) Notwithstanding anything in the articles of a company, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-

tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

83. In default of, and subject to, any regulations as to meetings and votes. [S. 67 Companies Act, 1908; s. 78, Indian Companies Act, 1882.]

(i) a meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule ;

(ii) five members may call a meeting :

(iii) any person elected by the members present at a meeting may be chairman thereof :

(iv) every member shall have one vote.

84. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. [S. 68, Companies Act, 1908.] [New.]

85. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

[S. 69, Companies Act, 1908; s. 173 (part), Indian Companies Act, 1882.]

(2) A resolution shall be a special resolution when it has been—

[S. 77, Indian Companies Act, 1882.]

- (a) passed in manner required for the passing of an extraordinary resolution; and
- (b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

[New.]

(3) The date of a special resolution shall be the date of the confirmation of the resolution in accordance with the provisions of clause (b) of sub-section (2).

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried on a show of hands shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

[Chillington Iron Company (1885), 29 C. D. 159.]

[New.]

(6) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(7) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(8) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

[S. 70, Companies Act, 1908; ss. 79 and 80, Indian Companies Act, 1882.]

86. (1) A copy of every special and extraordinary resolution shall, within fifteen days from the date of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding twenty rupees for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

87. (1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose. [S. 71, Companies Act, 1908; s. 92, Indian Companies Act, 1882.]

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

Appointment, Qualification, etc., of Directors.

88. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing— [S. 72, Companies Act, 1908.]

(i) signed and filed with the registrar of companies a consent in writing to act as such director; and

(ii) either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the ap-

plicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

[S. 73, Companies Act, 1908.]
New.]

89. (1) Without prejudice to the restrictions imposed by section 88, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

[S. 74, Companies Act, 1908; cf. s. 92 (part), Indian Companies Act, 1882.]

90. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to acts done by a director or manager after the appointment of such director or manager has been shown to be invalid.

[S. 75, Companies Act, 1908; ss. 70 and 71, Indian Companies Act, 1882.]

91. (1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors and managers (if any), and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.

(2) If default is made in complying with this section, the company shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues; and every director and manager of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

Contracts, etc.

[S. 76, Companies Act, 1908; s. 67, Indian Companies Act, 1882.]

92. (1) Contracts on behalf of a company may be made as follows (that is to say):—

(i) any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writ-

ing under the common seal of the company and may, in the same manner, be varied or discharged;

(ii) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(iii) any contract which, if made between private persons, would be by law valid although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors or administrators, as the case may be.

93. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

94. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

95. (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus.

[S. 80, Companies Act, 1908.]
[New.]

96. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

[S. 81, (1) (5) (7) (8) (9) Companies Act, 1908; Cf. s. 88, Indian Companies Act, 1882.]

97. (1) Every prospectus issued by or on behalf of a company, or by any person who is or has been engaged or interested in the formation of the company, shall state—

- (a) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
- (c) the names, descriptions and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the

amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor:

Provided that—

- (i) where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors;
- (ii) a company shall not be treated as a sub-purchaser unless it has to pay cash, shares or debentures to some person other than its own vendor; and
- (g) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- (h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and
- (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and
- (k) the dates of, and parties to, every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(l) the names and addresses of the auditors (if any) of the company; and

(m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

[S. 81 (2),
Companies
Act, 1908.]

98. For the purposes of section 97 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- Meaning of "vendor" in section 97.
- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
 - (b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
 - (c) the contract depends for its validity or fulfilment on the result of that issue.

[S. 81 (3),
Companies
Act, 1908.]

99. Where any of the property to be acquired by the company is to be taken on lease, section 97 shall apply as if the expression "vendor" included the lessor, and

the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

100. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 97, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

101. In the event of non-compliance with any of the requirements of section 97, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

- (a) as regards any matter not disclosed, he was not cognisant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part;

Provided that in the event of non-compliance with the requirements contained in clause (m) of sub-section (1) of section 97 no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

102. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

103. A company shall not, previously to the statutory meeting, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

104. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by

[S. 81 (4),
Companies
Act, 1908.]

[S. 81 (6),
Companies
Act, 1908.]

[S. 82, Com-
panies Act,
1908.]
[New.]

[S. 83, Com-
panies Act,
1908.]
[New.]

[S. 84, Com-
panies Act,
1908.]
[New.]

reference incorporated therein or issued therewith, unless it is proved—

- (a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true;
- (b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and
- (c) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave a reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the

prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

- (a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;
- (b) the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Allotment.

105. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely:—

- (a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription

has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of seventy days after the first issue of the prospectus, all money

[S. 85, Companies Act, 1908.]

received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within seventy-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the seventy-eighth day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;

has been subscribed and an amount not less than the five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any share or debentures before the commencement of this Act.

[S. 86, Companies Act, 1908.]

106. (1) An allotment made by a company to an applicant in contravention of the provisions of section 105 shall be voidable at

the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 105 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

[S. 87, Companies Act, 1908.]

107. (1) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(c) there has been filed with the registrar of companies a duly verified declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2) The registrar of companies shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares.

108. (1) Whenever a company limited by shares makes any allotment of its shares, the company shall, within one month thereafter, file with the registrar of companies—

[S. 88, Companies Act, 1908.]

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract, as above-mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Commissions and Discounts.

109. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount of rate per cent. of the commission paid or agreed to be paid is—

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of

prospectus and filed with the registrar of companies and, where a circular or notice not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

110. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Payment of interest out of Capital.

111. Where any shares of a company are issued for the purpose of raising money to pay interest out of money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(1) no such payment shall be made unless the same is authorized by the articles or by special resolution;

(2) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Local Government;

(3) before sanctioning any such payment the Local Government may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require

89, Companies Act, 1908.]
New.]

[S. 91, Companies Act, 1908; s. 73A, Indian Companies Act, 1882, inserted by s. 2, Act IV of 1910.]

the company to give security for the payment of the costs of the inquiry ;

- (4) the payment shall be made only for such period as may be determined by the Local Government ; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;
- (5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the Governor General in Council may, by notification in the Gazette of India, prescribe ;
- (6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;
- (7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate ;
- (8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

X of 1895.
IV of 1902.

Certificates of Shares, etc.

[S. 92, Companies Act, 1908.]

112. (1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary and other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, etc.

[S. 93 (1), Companies Act, 1908.]

[New.]

113. (1) Every mortgage or charge created after the commencement of this Act by a company registered in British India and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures ; or
- (b) a mortgage or charge on uncalled share capital of the company ; or
- (c) a mortgage or charge on any immoveable property wherever situate, or any interest therein ; or

(d) a mortgage or charge on any book debts of the company ; or

(e) a floating charge on the undertaking or property of the company ;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar ; and
- (ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts ; and
- (iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

[S. 93 (3), Companies Act, 1908.] 114. Where a series of debentures containing, or Particulars in case of giving by reference to any series of debentures other instrument, any entitling holders *pari passu* charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of covering deed (if any) by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees (if any) for the debenture-holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

[S. 93 (4), Companies Act, 1908.] 115. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

[S. 93 (2), and 93 (8), Companies Act, 1908.] 116. (1) The registrar shall keep, with respect to each company, a register of mortgages and charges, in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act and requiring registration under section 113, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

117. The registrar of companies shall keep a [S. 98, Companies Act, 1908.] chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

118. The registrar shall give a certificate under [S. 93 (5), Companies Act, 1908.] his hand of the registration of any mortgage or charge registered in pursuance of section 113, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 113 to 116 as to registration have been complied with.

119. The company shall cause a copy of every [S. 93 (6), Companies Act, 1908.] certificate of registration given under section 118, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock has been issued by the company before the mortgage or charge was created.

120. (1) It shall be the duty of the company to [S. 93 (7), Companies Act, 1908.] send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 113, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

(2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

121. Every company shall cause a copy of every [S. 93 (9), Companies Act, 1908.] instrument creating any mortgage or charge requiring registration under section 113, to be kept at the registered office of the company : Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

122. (1) If any person obtains an order for the [S. 94, Companies Act, 1908.] appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within fifteen days from the date of the

order or of the appointment under the powers contained in the instrument, give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

[S. 95, Companies Act, 1908.]

123. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

[S. 96, Companies Act, 1908.]

124. A Judge of a High Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 113, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as he thinks fit.

[S. 97, Companies Act, 1908.]

125. The Registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

[S. 99, Companies Act, 1908.]

126. (1) If any company makes default in sending to the Registrar for registration—

- (a) the particulars of any mortgage or charge created by the company, or
- (b) of the issues of debentures of a series,

requiring registration with the Registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the

application of some other person, the company, and every director, manager, secretary or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every director, manager and other officer of the company, who knowingly and wilfully authorized or permitted the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

127. (1) Every limited company shall keep a register of mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

128. (1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the Registrar of companies, and the register of mortgages kept in pursuance of section 127, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues; and in addition to the above penalty a Judge of a High Court may, by order, compel an immediate inspection of the copies or register.

[S. 102, Companies Act, 1908.]
[New.]

129. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days

in any year) as may be specified in the articles be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of two annas for every one hundred words required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of two annas for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every director, manager, secretary or other officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty and any Judge of a High Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

[S. 109, Companies Act, 1908.]

130. A condition contained in any debentures or in any deed for securing perpetual debentures, any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

[S. 104, Companies Act, 1908; s. 73B, Indian Companies Act, 1882.]

131. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

132. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance. [S. 105, Companies Act, 1908.]
[New.]

133. (1) Where, in the case of a company registered in British India, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge in priority to claims under the charge. [S. 107, Companies Act, 1908.]
[New.]

charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by Banking and certain other Companies.

[S. 108, Companies Act, 1908; s. 69, Indian Companies Act, 1882.]

134. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked C in the First Schedule, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of a statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

[New.]

(5) This section shall not apply to any life assurance company to which the provisions of the Indian Life Assurance Act, 1908, as to the annual statements to be made by such a company, apply with or without modifications if the company complies with these provisions.

Investigation by the Registrar.

[New.]

135. (1) Where the Registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by order in writing, call on the

company submitting the document to furnish such information or explanation within such time as he may specify in his order.

(2) On the receipt of an order by the registrar under sub-section (1), it shall be the duty of all officers and agents of the company to furnish such information or explanation of any such matter to the best of their power.

(3) If any officer or agent refuses to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees for each offence.

(4) On receipt of such information or explanation the registrar shall annex the same to the original document submitted to him; and any such additional document shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report the circumstances of the case in writing to the Local Government.

** Inspection and Audit.*

136. The Local Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Local Government direct—

[S. 109 Companies Act, 1908; s. 82, Indian Companies Act, 1882.]

- (i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued;
- (ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;
- (iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;
- (iv) in the case of any company, on a report by the Registrar under section 135 (5).

137. An application by members of a company under section 136 shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and the Local Government may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

[S. 109 Companies Act, 1908; s. 83, Indian Companies Act, 1882.]

138. It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

[S. 109 Companies Act, 1908; s. 84, Indian Companies Act, 1882.]

(2) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding one hundred rupees in respect of each offence.

[S. 109 (6),
(7), Companies
Act, 1908;
s. 85, Indian
Companies
Act, 1882.]
139. (1) On the conclusion of the investigation Results of examination the inspectors shall report their opinion to the Local Government, and a copy of the report shall be forwarded by the Local Government to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(2) The report shall be written or printed, as the Local Government directs.

(3) All expenses of and incidental to the investigation shall be defrayed by the applicants unless the Local Government directs the same to be paid by the company, which the Local Government is hereby authorised to do.

[S. 110,
Companies
Act, 1908;
s. 86, Indian
Companies
Act, 1882.]
140. (1) A company may by special resolution Power of company to appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Local Government, except that, instead of reporting to the Local Government, they shall report in such manner and to such persons as the company at a general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Local Government.

[S. 111,
Companies
Act, 1908;
s. 87, Indian
Companies
Act, 1882.]
141. A copy of the report of any inspectors Report of inspectors appointed under this Act, to be evidence. authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

[S. 112,
Companies
Act, 1908.]
[New.]
142. (1) No person other than a person holding a certificate from the Local Government entitling him in that behalf shall be appointed auditor of a company.

(2) The Local Government shall, by notification in the local official Gazette, make rules providing for the grant of certificates entitling the holders thereof to be appointed auditors of a company, and may by such rules provide the conditions and restrictions on and subject to which such certificate shall be granted.

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made at an annual general meeting, the Local Government may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) A director or officer of the company shall not be capable of being appointed auditor of the company.

(6) A person, other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting:

Provided that, if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

143. (1) Every auditor of a company shall Powers and duties of auditors. have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors. [S. 113, Companies Act, 1908.]

(2) The auditors shall make a report to the shareholders on the accounts examined by them,

and on every balance-sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required; and
- (b) whether, in their opinion, the balance-sheet referred to in the report is properly drawn up in conformity with the law, and so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, registered after the commencement of this Act, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

[S. 114, Companies Act, 1908.] **144.** (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act.

Carrying on business with less than the legal minimum of members.

[S. 115, Companies Act, 1908; s. 73, Indian Companies Act, 1882.] **145.** If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the action of any other member.

Service and Authentication of Documents.

[S. 116, Companies Act, 1908; s. 89, Indian Companies Act, 1882.] **146.** A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

[S. 90, Indian Companies Act, 1882.] **147.** A document may be served on the Registrar of companies by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

148. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters.

149. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Governor General in Council may alter any of the tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act, but no alteration made by the Governor General in Council in Table A in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

(4) In addition to the powers hereinbefore conferred by this section, the Governor General in Council may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

(5) Any such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

150. (1) A company may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other company or person.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

151. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the companies, or any of the terms, conditions or stipulations thereof.

152. Every reference or agreement in accordance with this Act, except so far as it is, from time to time, revoked or modified in accordance with this Act, shall bind the companies and shall be carried into full effect.

153. Where the companies agree, the reference shall be made to a single arbitrator.

154. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, namely:—where there are two companies, the reference shall be made to two arbitrators;

where there are three or more companies, the reference shall be made to so many arbitrators as there are companies.

[S. 101,
Indian
Companies
Act, 1882.]

155. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

[S. 102, *ibid.*]

156. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Local Government, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

[S. 103, *ibid.*]

157. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

[S. 104, *ibid.*]

158. Where the company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then on the application of the companies or any of them, the Local Government may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

[S. 105, *ibid.*]

159. When any appointment of an arbitrator is made the company making the appointment shall have no power to revoke the same without the previous consent in writing of the other company or every other company in writing under their common seal.

[S. 106, *ibid.*]

160. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

[S. 107, *ibid.*]

161. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the

application of the companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

162. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

[S. 108,
Indian Com-
panies Act,
1882.]

163. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the companies or any of them, the Local Government may appoint an umpire. The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

[S. 109, *ibid.*]

164. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

[S. 110, *ibid.*]

165. Where there are two or more arbitrators, if they do not within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

[S. 111, *ibid.*]

166. The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the companies, respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath.

[S. 112, *ibid.*]

167. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

[S. 113, *ibid.*]

168. The arbitrator, and the arbitrators and the umpire, respectively, may proceed in the absence of all or any of the companies in every case in which, after giving notice in that

[S. 114, *ibid.*]

behalf to the companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

[S. 115, Indian Companies Act, 1882.] 169. (1) The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

(2) Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

[S. 116, *ibid.*] 170. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators or the umpire, shall be binding and conclusive on all the companies.

[S. 117, *ibid.*] 171. Provided always that (except where and as Power for umpire to the companies otherwise extend period for making his award. agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if the award be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

[S. 118, *ibid.*] 172. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

[S. 119, *ibid.*] 173. Except only so far as the companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

[S. 120, *ibid.*] 174. Full effect shall be given by the Courts according to their respective jurisdictions, and by the companies respectively and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the companies respectively or their respective property that the Courts or any Judge thereof shall direct.

[S. 121, Indian Companies Act, 1882.] 175. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in

the discretion of the arbitrator, and the arbitrators and the umpire, respectively.

176. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs. [S. 122, *ibid.*]

177. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure, 1908, shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder. [S. 123, *ibid.*]

178. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs. [S. 120, Companies Act, 1908; s. 203, Indian Companies Act, 1882.] [Cf. *English, Scottish, etc., Bank* (1893), 3 Ch. 385.]

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

Conversion of private company into public company.

179. A private company may, subject to anything contained in the Companies Act, 1908, by a special resolution and by filing with the Registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company. [S. 121 (2), Companies Act, 1908.]

PART V.

WINDING-UP.

Preliminary.

[S. 122, Companies Act, 1908.] 180. (1) The winding-up of a company may be either—

- (i) by the Court; or
- (ii) voluntary; or
- (iii) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes.

Contributories.

[S. 123 (1), Companies Act, 1908; s. 61, Indian Companies Act, 1882.] 181. (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

- (i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up;
- (ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member;
- (v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (vii) a sum due to any member of a company in his character of a member, by way of

dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding-up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him. [S. 123(3), Companies Act, 1908; ss. 139, 178, Indian Companies Act, 1882.]

182. In the winding-up of a limited company [S. 123 (2), Companies Act, 1908; s. 62, Indian Companies Act, 1882.] any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding-up a member of an unlimited company: Provided that—

- (i) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up;
- (ii) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (iii) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding-up.

183. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory. [S. 124, Companies Act, 1908; ss. 124, 178, Indian Companies Act, 1882.]

184. (1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability. [S. 125, Companies Act, 1908; ss. 125, 178, Indian Companies Act, 1882.]

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the towns of Calcutta, Madras and Bombay.

185. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees shall be liable in a due course of admi- [S. 126, Companies Act, 1908; s. 126, Indian Companies Act, 1882.]

nistration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

[S. 154,
Indian Com-
panies Act,
1882.]

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the money due.

[S. 127,
Companies
Act,
1908; s. 127,
Indian Com-
panies Act,
1882.]

186. If a contributory becomes insolvent either before or after he has been placed on the list of contributories, then—

[S. 125
(part), Indian
Companies
Act, 1882.]

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Winding up by Court.

[S. 129,
Companies
Act, 1908;
s. 128,
Indian
Companies
Act, 1882.]

Circumstances in which company may be wound up by Court. **187.** A company may be wound up by the Court—

- (i) if the company has by special resolution resolved that the company be wound up by the Court;
- (ii) if default is made in filing the statutory report or in holding the statutory meeting;
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven;
- (v) if the company is unable to pay its debts;
- (vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

[S. 130,
Companies
Act, 1908;
s. 129,
Indian
Companies
Act, 1882.]

Company when deemed unable to pay its debts. **188.** A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

189. (1) The Court having jurisdiction to wind up companies shall be the principal Court having original civil jurisdiction in the place in which the registered office of the company is situate, unless in the regulations for the management of the company it shall be stipulated that the company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the Court having jurisdiction shall be the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

(2) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up.

190. Where the High Court makes an order for winding-up a company referred to District Court, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

191. If during the progress of a winding-up in a District Court it is made *ibid.* Transfer of winding-up from one District Court to another. that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

192. (1) An application to the Court for the Provisions as to winding-up of a company applications for shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

(a) a contributory shall not be entitled to present a petition for winding-up a company unless—

- (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

[S. 131,
Companies
Act, 1908;
s. 130,
Indian
Companies
Act, 1882.]

[S. 218,
Indian
Companies
Act, 1882.]

[S. 137,
Companies
Act, 1908;
ss. 131, 13
Indian
Companies
Act, 1882.]

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder; and

(b) a petition for winding-up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a petition for winding-up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding-up has been established to the satisfaction of the Court.

(2) Where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

[S. 138, Companies Act, 1908; s. 131 (second clause), Indian Companies Act, 1882.] **193.** An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

[S. 139, Companies Act, 1908; s. 133, Indian Companies Act, 1882.] **194.** A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

[S. 140, Companies Act, 1908; s. 134, Indian Companies Act, 1882.] **195.** The Court may, at any time after the presentation of the petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

[S. 141, Companies Act, 1908; s. 135, Indian Companies Act, 1882.] **196.** (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons

who, in the opinion of the Court, are responsible for the default.

197. When a winding-up order has been made, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose. [S. 142, Companies Act, 1908; s. 136, Indian Companies Act, 1882.]

198. (1) On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the company to the Registrar of companies, who shall make a minute thereof in his books relating to the company. [S. 143, Companies Act, 1908; s. 137, Indian Companies Act, 1882.]

(2) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

199. The Court may at any time after an order for winding-up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit. [S. 144, Companies Act, 1908; s. 138, Indian Companies Act, 1882.]

200. The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. [S. 145, Companies Act, 1908; s. 140, Indian Companies Act, 1882.]

201. (1) For the purpose of conducting the proceedings in winding-up a company and assisting the Court therein, the Court may appoint a person or persons, to be called an official liquidator or official liquidators. [S. 149, Companies Act, 1908; s. 141, Indian Companies Act, 1882.]

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding-up. [Cf. S. 134, second clause Indian Companies Act, 1882.]

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(5) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

202. (1) Any official liquidator may resign or be removed by the Court on due cause shown. [S. 149, Companies Act, 1908; s. 142, Indian Companies Act, 1882.]

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court.

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

[Ss. 149 and 150, Companies Act, 1908; s. 143, Indian Companies Act, 1882.]

203. (1) The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

(2) He shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

[Cf. s. 92, Indian Companies Act, 1882.]

(3) The acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

[S. 151, Companies Act, 1908; s. 144, Indian Companies Act, 1882.]

204. The official liquidator shall have power, with the sanction of the Court, to do the following things:—

- (a) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding-up of the same;
- (c) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- (f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (g) to raise on the security of the assets of the company any money requisite;
- (h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges

of the Administrators General of Bengal, Madras and Bombay, respectively;

- (i) to do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

205. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

206. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

207. The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

208. (1) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary powers of Court.

209. (1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is

[S. 151 (2), Companies Act, 1908; s. 145, Indian Companies Act, 1882.]

[S. 151 (1), Companies Act, 1908; s. 146, Indian Companies Act, 1882.]

[S. 156, Companies Act, 1908.]

[S. 158, Companies Act, 1908.]

[S. 163, Companies Act, 1908; ss. 147, 148, Indian Companies Act, 1882.]

required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

[S. 164, Companies Act, 1908; s. 149, Indian Companies Act, 1882.] **210.** The Court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

[S. 165, Companies Act, 1908; s. 150, Indian Companies Act, 1882.] **211.** (1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company, in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance:

Provided that in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

[S. 166, Companies Act, 1908; s. 151, Indian Companies Act, 1882.] **212.** (1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

[S. 167 (1), Companies Act, 1908; s. 152, Indian Companies Act, 1882.] **213.** (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of Bengal, the Bank of Madras,

or the Bank of Bombay, as the case may be, or any branch thereof, respectively, to the account of the official liquidator instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

214. All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively, in the event of a company being wound-up by the Court, shall be subject in all respects to the orders of the Court. [S. 167 (2), Companies Act, 1908; s. 153, Indian Companies Act, 1882.]

[S. 168, Companies Act, 1908; s. 155, Indian Companies Act, 1882.] **215.** (1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

216. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved. [S. 169, Companies Act, 1908; s. 156, Indian Companies Act, 1882.]

217. The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto. [S. 170, Companies Act, 1908; s. 157, Indian Companies Act, 1882.]

218. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the Court thinks just. [S. 171, Companies Act, 1908; s. 158, Indian Companies Act, 1882.]

219. (1) When the affairs of a company have been completely wound-up the Court shall make an order that the company be dissolved from the date and of the order, and the company shall be dissolved accordingly. [S. 172, Companies Act, 1908; s. 159, 160, Indian Companies Act, 1882.]

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar of companies, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which he is in default.

Extraordinary Powers of Court.

220. (1) The Court may, after it has made a winding-up order, summon any persons suspected of having property of the company or person known suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company. [S. 174, Companies Act, 1908; s. 162, Indian Companies Act, 1882.]

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

[S. 175, Companies Act, 1908.]

221. (1) When an order has been made for winding-up a company by the Court, the Court may direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Local Government in that behalf, employ a legal practitioner.

(3) Any creditor or contributory may also take part in the examination either personally or by a legal practitioner.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an Official Referee, Master or Registrar, and the powers

of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

222. The Court, at any time either before or after making a winding-up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

[S. 176, Companies Act, 1908; s. 164, Indian Companies Act, 1882.]

223. Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

[S. 177, Companies Act, 1908; s. 165, Indian Companies Act, 1882.]

Enforcement of and Appeal from Orders.

224. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

[Cf. s. 178, Companies Act, 1908; s. 166, Indian Companies Act, 1882.]

225. Any order made by a Court for or in the course of the winding-up of a company shall be enforced in any part of British India other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

[S. 167, Indian Companies Act, 1882.]

226. Where any order made by one Court is required to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

[Cf. s. 180 (3), Companies Act, 1908; s. 168, Indian Companies Act, 1882.]

227. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, 1908, unless such time is extended by the Court of appeal.

[S. 168, Indian Companies Act, 1882.]

Voluntary winding-up.

[S. 182, Companies Act, 1908; s. 173, Indian Companies Act, 1882.] Circumstances in which company may be wound-up voluntarily—

- (1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily;
- (2) if the company resolves by special resolution that the company be wound-up voluntarily;
- (3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind-up.

[S. 183, Companies Act, 1908; s. 174, Indian Companies Act, 1882.] 229. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the date of the special resolution.

[S. 184, Companies Act, 1908; s. 175, Indian Companies Act, 1882.] 230. When a company is wound-up voluntarily the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

[S. 185, Companies Act, 1908; s. 176, Indian Companies Act, 1882.] 231. (1) Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given within ten days of the passing of the same by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

[S. 186, Companies Act, 1908; ss. 177 and 185, Indian Companies Act, 1882.] 232. The following consequences shall ensue on the voluntary winding-up of a company:—

- (i) the assets of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company;
- (ii) the company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them;

- (iii) on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;
- (iv) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator in a winding-up by the Court;
- (v) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;
- (vi) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (vii) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two;
- (viii) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator;
- (ix) the Court may, on cause shown, remove a liquidator, and appoint another liquidator.

[S. 187, Companies Act, 1908.] 233. (1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the Registrar of companies a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

[S. 188, Companies Act, 1908.] 234. (1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in some newspaper (if any) circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the Court upon an application under this section.

(5) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

[S. 189, Companies Act, 1908; s. 184, Indian Companies Act, 1882.] **235.** (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may on application by any contributory or by the continuing liquidators, be determined by the Court.

[S. 190, Companies Act, 1908; s. 179, Indian Companies Act, 1882.] **236.** (1) A company about to be, or in course of being, wound-up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

[S. 191, Companies Act, 1908; ss. 180-181, Indian Companies Act, 1882.] **237.** (1) Any arrangement entered into between a company about to be, or in the course of being, wound-up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

[S. 192, Companies Act, 1908; s. 204, Indian Companies Act, 1882.] **238.** (1) Where a company is proposed to be wound-up altogether and the whole or part of its business or property is proposed to be transferred or sold to another company (in this

section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the date of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding-up the company, or for appointing liquidators; but if an order is made within a year for winding-up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

239. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. [S. 205, Indian Companies Act, 1882.]

If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

240. (1) When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred. [S. 206, Indian Companies Act, 1882.]

(2) After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

(3) If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other

party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

[S. 207,
Indian Com-
panies Act,
1882.]

241. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

[S. 208,
Indian Com-
panies Act,
1882.]

242. (1) Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

(2) If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

[S. 209,
Indian Com-
panies Act,
1882.]

243. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

[S. 210,
Indian Com-
panies Act,
1882.]

244. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

[S. 211,
Indian Com-
panies Act,
1882.]

245. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure, 1908, shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

V of 1908.

[S. 193,
Companies
Act, 1908;
s. 182, Indian
Companies
Act, 1882.]

246. (1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise as respects the enforcing of calls, or any other matters, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

247. (1) Where a company is being wound-up voluntarily, the liquidator may, from time to time, summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

248. (1) In the case of every voluntary winding-up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement, specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in section 231.

(3) Within one week after the meeting, the liquidator shall make a return to the Registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(4) The Registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within seven days after the making of the order, to file with the Registrar a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

249. All costs, charges and expenses properly incurred in the voluntary winding-up of a company including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding-up.

[S. 194, Com-
panies Act,
1908; s. 183,
Indian Com-
panies Act,
1882.]

[S. 195,
Companies
Act, 1908;
ss. 186, 187,
Indian Com-
panies Act,
1882.]

[S. 196, Com-
panies Act,
1908; s. 188,
Indian Com-
panies Act,
1882.]

[S. 197,
Companies
Act, 1908; s.
189, Indian
Companies
Act, 1882.]

250. The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding-up.

[S. 198,
Companies
Act, 1908; s.
190, Indian
Companies
Act, 1882.]

251. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Winding-up subject to supervision of Court.

[S. 199,
Companies
Act, 1908; s.
191, Indian
Companies
Act, 1882.]

252. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

[S. 200,
Companies
Act, 1908; s.
192, Indian
Companies
Act, 1882.]

253. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up by the Court.

[S. 201,
Companies
Act, 1908; s.
193, Indian
Companies
Act, 1882.]

254. The Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

[S. 202,
Companies
Act, 1908; s.
194, Indian
Companies
Act, 1882.]

255. (1) Where an order is made for a winding-up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

[S. 203,
Companies
Act, 1908; s.
195, Indian
Companies
Act, 1882.]

256. (1) Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1) and save for the purposes of section 221, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

257. Where an order has been made for the winding-up of a company subject to supervision, and an order is afterwards made for winding-up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators in the winding-up by the Court.

[S. 204,
Companies
Act, 1908; s.
196, Indian
Companies
Act, 1882.]

Supplemental Provisions.

258. (1) In the case of voluntary winding-up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up, shall be void.

[S. 205,
Companies
Act, 1908;
ss. 175 & 197,
Indian Com-
panies Act,
1882.]

(2) In the case of a winding-up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

259. In every winding-up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

[S. 206,
Companies
Act, 1908.
Cf. s. 130,
Indian Com-
panies Act,
1882 (Part).]

260. In the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the

[S. 207,
Companies
Act, 1908.]

estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up, and make such claims against the company as they respectively are entitled to by virtue of this section.

[S. 209, Companies Act, 1908; s. 200A, Indian Companies Act, 1882.]

261. (1) In a winding-up there shall be paid in priority to all other debts—

- (a) all revenue, taxes, cesses and rates, whether payable to His Majesty or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;
- (b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant; and
- (c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the company within the two months next before the said date.

(2) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding-up.

262. (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

263. (1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding-up shall be void.

(2) Nothing in this section applies to proceedings by the Government.

264. (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

(2) Any words creating a charge on all the property of a company which is a going concern shall be construed as creating a floating charge only.

265. (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding-up, do the following things or any of them:—

- (i) pay any classes of creditors in full;
- (ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;
- (iii) compromise all calls and liabilities to calls, debts and liabilities, capable of resulting in debts, and all claims, present or future, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any

[S. 210, Companies Act, 1908; s. 213, Indian Companies Act, 1882.]

[S. 211, Companies Act, 1908; s. 212, Indian Companies Act, 1882.]

[S. 212, Companies Act, 1908.]

[S. 214, Companies Act, 1908; s. 201, Indian Companies Act, 1882.]

security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributor may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

[S. 215, Companies Act, 1908; s. 214, Indian Companies Act, 1882.] **266.** (1) Where in the course of winding-up a company it appears that any person who has taken part in the formation or

promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rates as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

[S. 216, Companies Act, 1908; s. 215, Indian Companies Act, 1882.] **267.** If any director, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudu-

lently secretes any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

[S. 217, Companies Act, 1908; s. 216, Indian Companies Act, 1882.] **268.** (1) If it appears to the Court in the course of a winding-up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority of all other liabilities.

[S. 218, Companies Act, 1908; s. 217, Indian Companies Act, 1882.] **269.** If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or

about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

270. (1) Where by this Act the Court is authorised in relation to winding-up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

271. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

272. After an order for a winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

273. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

(a) in the case of a winding-up by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of a voluntary winding-up, in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

274. (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void.

[S. 219, Companies Act, 1908; ss. 140 and 193, Indian Companies Act, 1882.]

[S. 220, Companies Act, 1908; s. 198, Indian Companies Act, 1882.]

[S. 221, Companies Act, 1908; s. 200, Indian Companies Act, 1882.]

[S. 222, Companies Act, 1908; s. 199, Indian Companies Act, 1882.]

[S. 223, Companies Act, 1908.]

and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the Registrar of companies a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

[S. 224,
Companies
Act, 1908.]

275. (1) Where a company is being wound up, Information as to if the winding-up is not pending liquidations. concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code and shall be punishable accordingly on the application of the liquidator.

XIV of 1860.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

[S. 225,
Companies
Act, 1908 ;
s. 170, Indian
Companies
Act, 1882.]

276. In all proceedings under this Part every Court, Judge and Judicial notice to be taken of signature of person judicially acting and all other officers, judicial or officers, ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part or any official copy thereof.

[Cf. s. 226,
Companies
Act, 1908 ;
s. 171, Indian
Companies
Act, 1882.]

277. (1) The Judges of the District Courts, Special Commissioners who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order for winding-up the company.

(2) Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and

charges and expenses to witnesses, as the Court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

278. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part, may be sworn in British India, Great Britain or Ireland, or abroad before any competent Court or person. India, or in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorized to take and receive affidavits, or before any of His Majesty's Consuls or Vice-Consuls in any place outside His Majesty's dominions.

[Cf. s. 228,
Companies
Act, 1908 ;
s. 172,
Indian Com-
panies Act,
1882.]

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Rules.

279. (1) The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure, 1903, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a company.

(2) Without prejudice to the generality of the foregoing power the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court; that is to say, the powers and duties of the Court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved;

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of Defunct Companies from Register.

280. (1) Where the Registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter enquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration

[S. 242, Co
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1908.]

of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the local official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the local official Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the local official Gazette and send to the company a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register and shall publish notice thereof in the local official Gazette, and on the publication in the local official Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off: and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director or officer of the company whose name and address are known, to the Registrar of companies, or may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART VI.

REGISTRATION OFFICE AND FEES.

281. (1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Local Government thinks fit, and no company shall be registered except at an office within that part of British India in which, by the memorandum, the registered office of the company is declared to be established.

(2) The Local Government may appoint such Registrars, Assistant Registrars, clerks and servants as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Local Government.

(4) The Local Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Local Government, not exceeding one rupee for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar on payment for the certificate, certified copy or extract, of such fees as the Local Government may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract.

(6) Whenever any act is by this Act directed to be done to or by the Registrar of companies, it shall, until the Local Government otherwise directs, be done to or by the existing Registrar of joint-stock companies or in his absence to or by such person as the Local Government may for the time being authorise; but, in the event of the Local Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Local Government may appoint.

282. (1) There shall be paid to the Registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the Governor General may from time to time direct.

(2) All fees paid to the Registrar in pursuance of this Act shall be accounted for to Government.

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

[S. 245, Companies Act, 1908; s. 221, Indian Companies Act, 1882.] 283. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and, in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that—

- X of 1866.
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- (1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 or Act VII of 1860 or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882;
 - (2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, as the case may be.

[S. 246, Companies Act, 1908; s. 222, Indian Companies Act, 1882.] 284. This Act shall apply to every company registered but not formed under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them.

[S. 248, Companies Act, 1908; s. 223, Indian Companies Act, 1882.] 285. A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

[S. 249, Companies Act, 1908; ss. 224, 225, Indian Companies Act, 1882.] 286. (1) With the exceptions and subject to the provisions mentioned and contained in this section,—

- (i) any company consisting of seven or more members, which was in existence on the first day of May eighteen hundred and eighty-two, including any company regis-

tered under Act No. XIX of 1857 and Act No. VII of 1861 or either of them, and

- (ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of letters patent, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

(2) Provided as follows:—

- (a) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;
- (b) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (c) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;
- (d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose;
- (e) where a company not having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting;
- (f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be

a member, and of the costs and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Indian Companies Act, 1882, shall not be registered in pursuance of this section.

[S. 250, Companies Act, 1908; s. 226, Indian Companies Act, 1882.] **287.** For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

[S. 252, Companies Act, 1908; ss. 227, 229, Indian Companies Act, 1882.] **288.** Before the registration in pursuance of this Part of a joint-stock company there shall be delivered to the Registrar the following documents (that is to say) :—

- (1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (2) a copy of any Act of Parliament, Act of the Governor General in Council, royal charter, letters patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the company; and
- (3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—
 - (a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

- (b) the number of shares taken and the amount paid on each share;
- (c) the name of the company, with the addition of the word "limited" as the last word thereof; and
- (d) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

289. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar—

- (1) a list showing the names, addresses and occupations of the directors or other managers (if any) of the company; and
- (2) a copy of any Act of Parliament, Act of the Governor General in Council, letters patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the company; and
- (3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

290. The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a declaration of any two or more directors or other principal officers of the company made before a Justice of the Peace or a District Judge.

291. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

292. (1) Where a banking company which was in existence on the first day of May eighteen hundred and eighty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

[S. 257, Companies Act, 1908; s. 233, Indian Companies Act, 1882.] **293.** No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament or Act of the Governor General in Council or by letters patent.

[S. 258, Companies Act, 1908; s. 234, Indian Companies Act, 1882.] **294.** When a company registers in pursuance of this Part with limited liability, the word "limited" shall form and be registered as part of its name.

[S. 259, Companies Act, 1908; s. 235, Indian Companies Act, 1882.] **295.** On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

[S. 260, Companies Act, 1908; s. 237, Indian Companies Act, 1882.] **296.** All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

[S. 261, Companies Act, 1908; s. 238, Indian Companies Act, 1882.] **297.** The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

[S. 262, Companies Act, 1908; s. 239, Indian Companies Act, 1882.] **298.** All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit

or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

299. When a company is registered in pursuance of this Part—
Effect of registration under Act.

[S. 263, Companies Act, 1908; s. 240, Indian Companies Act, 1882.]

- (i) all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;
- (ii) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—
 - (a) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;
 - (b) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
 - (c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor General in Council relating to the company;
 - (d) subject to the provisions of this section, the company shall not have power, without the sanction of the Governor General in Council, to alter any provision contained in any letters patent relating to the company;
 - (e) the company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt

or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities as afore-said; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(iii) the provisions of this Act with respect to—

- (a) the registration of an unlimited company as limited;
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up;

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, royal charter, deed of settlement, contract of co-partnery, letters patent or other instrument constituting or regulating the company;

- (iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, letters patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act;
- (v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may by virtue of any Act of Parliament, Act of the Governor General in Council, deed

of settlement, contract of co-partnery, letters patent or other instrument constituting or regulating the company, be vested in the company.

300. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

[S. 264, Companies Act, 1908; Cf. s. 4, et seq. Act XII of 1895.]

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

- (a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar a printed copy of the substituted memorandum and articles; and,
- (b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an Act of the Governor General in Council, a royal charter or letters patent.

301. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

[S. 265, Companies Act, 1908; s. 241, Indian Companies Act, 1882.]

302. Where an order has been made for winding-up a company registered in pursuance of this Part, no suit or other legal proceedings shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

[S. 266, Companies Act, 1908; s. 242, Indian Companies Act, 1882.]

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

[S. 267, Companies Act, 1908; s. 243, Indian Companies Act, 1882.]

303. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an Act of the Governor General in Council nor a company registered under the Indian Companies Act, 1866, or under any Act repealed thereby, or under the Indian Companies Act, 1882, or under this Act, but, save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

[S. 268, Companies Act, 1908; s. 243, Indian Companies Act, 1882.]

304. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to an unregistered company, with the following exceptions and additions:—

- (i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business; and the principal place of business situate in that part of British India in which proceedings are being instituted shall, for all the purposes of the winding-up, be deemed to be the registered office of the company;
- (ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- (iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):—
 - (a) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Court is of opinion that it is just and equitable that the company should be wound up;
- (iv) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted, in a sum exceeding five

hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

- (b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
- (c) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment

repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

[S. 269, Companies Act, 1908; s. 244, Indian Companies Act, 1882.]

305. (1) In the event of an unregistered company being wound-up, Contributories in winding-up of unregistered companies shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding-up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the representatives, heirs and devisees of deceased contributories, and to the assignees of insolvent contributories shall apply.

[S. 270, Companies Act, 1908; s. 245, Indian Companies Act, 1882.]

306. The provisions of this Act with respect to Power to stay or restrain proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

[S. 271, Companies Act, 1908; s. 246, Indian Companies Act, 1882.]

307. Where an order has been made for winding-up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

[S. 272, Companies Act, 1908; s. 247, Indian Companies Act, 1882.]

308. If an unregistered company has no power Directions as to property to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding-up the company and recovering its property.

309. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding-up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

[S. 273, Companies Act, 1908; s. 248, Indian Companies Act, 1882.]

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

310. (1) Every company incorporated outside British India which establishes a place of business in British India shall, within one month from the establishment of the place of business, file with the Registrar of companies in that part of British India in which such place of business is situated,—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the Registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the Registrar such a statement in the form of a balance-sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

- (a) in every prospectus inviting subscriptions for its share or debentures in British India state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in the English language, and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in that place; and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in the English language in all notices, advertisements and other official publications of the company.
- (5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.
- (6) For the purposes of this section—
- the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;
 - the expression "place of business" includes a share transfer or share registration office;
 - the expression "director" includes any person occupying the position of director, by whatever name called; and
 - the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.
- (7) There shall be paid to the Registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

PART XI.

SUPPLEMENTAL.

Legal proceedings, offences, etc.

[S. 252, Indian Companies Act, 1882.]

311. (1) All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such Magistrate is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such Magistrate, the offender shall be committed for trial before the Court of Session.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

Punishment of offences committed within Presidency-towns.

312. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered.

Applications of fines.

313. Where a limited company is plaintiff in any suit or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Costs in actions by certain limited companies.

314. If in any proceeding against a director of a company for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

Power of Court to grant relief in certain cases.

315. Whoever in any return report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the fourth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Penalty for false statement.

316. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Penalty for improper use of word "Limited."

317. The provisions of this Act with respect to saving of pending winding-up shall not apply to any company of which the winding-up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding-up, the Indian Companies Act, 1882, VI of 1882, shall be deemed to remain in full force.

Saving of pending proceedings for winding-up.

[S. 277, Companies Act, 1908.]

[S. 278, Companies Act, 1908; s. 93, Indian Companies Act, 1882.]

[S. 279, Companies Act, 1908.]

[S. 281, Companies Act, 1908.]

[S. 282, Companies Act, 1908.]

[S. 287, Companies Act, 1908; s. 250, Indian Companies Act, 1882.]

[S. 288, Companies Act, 1908; s. 251, Indian Companies Act, 1882.]

318. Every conveyance, mortgage or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

[S. 289, Companies Act, 1908; s. 220 (f), Indian Companies Act, 1882.]

319. (1) The offices existing at the commencement of this Act for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing Registrars, Assistant Registrars, officers, clerks and servants in those offices shall during the pleasure of the Local Government hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Local Government with regard to the execution of their duties.

[S. 293, Companies Act, 1908.]

320. Nothing in this Act shall affect the provisions of the Life Assurance Companies Act, 1912.

[S. 255, Indian Companies Act, 1882.]

321. In sections 1 and 18 of Act No. XXI of 1860 (*for the registration of Literary, Scientific and Charitable Societies*), the words "Registrar of Joint Stock Companies" shall be construed to mean Registrar of Companies under this Act or any Act for the time being in force.

[S. 256, Indian Companies Act, 1882.]

322. Save as provided in sections 213 and 214, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

[S. 286, Companies Act, 1908; s. 2, Indian Companies Act, 1882.]

323. (1) The enactments mentioned in the Fifth Schedule are hereby repealed to the extent specified in the third column thereof:

Provided that—

(1) the repeal shall not affect—

- (a) the incorporation of any company registered under any enactment hereby repealed; nor
- (b) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor
- (c) Table A in the First Schedule annexed to the Indian Companies Act, 1882, or any part thereof so far as the same applies to any company existing at the commencement of this Act.

VI of 1882.

(2) all fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act.

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

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SCHEDULES.

THE FIRST SCHEDULE.

SEE SECTIONS 2, 16, 17, 83, 299.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 19 or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

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Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 107 of the Indian Companies Act, 19 if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of

V H

the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 105 and 108 of the Indian Companies Act, 19 as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect

of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be

deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :

I, A B of _____, in consideration of the sum of rupees _____ paid to me by C D of _____ (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the day of _____

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

- (a) a fee not exceeding two rupees is paid to the company in respect thereof; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other

advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A declaration in writing made before a Justice of the Peace or District Judge that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and

limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may, by special resolution,—

- (a) consolidate and divide its share capital into shares of larger amount than its existing shares ;
- (b) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 49 of the Indian Companies Act, 19 ;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person ;
- (d) reduce its share capital in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 81 of the Indian Companies Act, 19

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default, may

be convened by such requisitionists, as provided by section of the Indian Companies Act, 19 . If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company ; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business ; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished

at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its

directors in accordance with the provisions of section 84 of the Indian Companies Act, 19, is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited.

"I of in the district of, being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof." Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 89 of the Indian Companies Act, 19.

Powers and duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 19, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation, of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the

company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of monies borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Indian Companies Act, 19, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar of companies an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the

secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other persons as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

- (a) ceases to be a director by virtue of section 89 of the Indian Companies Act, 19; or
- (b) any partner of his, or the firm of which he is a member, holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes bankrupt; or
- (d) is found lunatic or becomes of unsound mind; or
- (e) is concerned or participates in the profits of any contract with the company; or
- (f) is punished under any of the penal provisions of the Indian Companies Act, 19;

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or

such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so found shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out of profits.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

(a) of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and

(b) of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund. The balance-sheet shall contain a summary of the

property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

110. Auditors shall be appointed and their duties regulated in accordance with sections 142 and 143 of the Indian Companies Act, 19, or any statutory modification thereof for the time being in force.

Notices.

111. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

112. If a member has no registered address in British India and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

113. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

114. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

115. Notice of every general meeting shall be given in some manner hereinbefore authorized to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who, but for his death or insolvency, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

(The First Schedule.—Table A : Balance-sheet.)

Dr.		Cr.	
CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
	Rs.		Rs. As.
I. CAPITAL.		7	
1 The number of shares	Immovable property—distinguishing—	
2 The amount paid per share	(a) Freehold land ...	...
3 If any arrears of call, the nature of the arrears and the names of the defaulters.	...	(b) " buildings ...	...
4 The particulars of any forfeited shares	(c) Leasehold ...	...
5 The amount of loans or mortgages or debenture bonds.	...	8	
6 The amounts of debts owing by the Company—distinguishing—	...	Moveable property—distinguishing—	
(a) Debts for which acceptances have been given.	...	(d) Stock-in-trade ...	...
(b) Debts to tradesmen for supplies of stock-in-trade or other articles.	...	(e) Plant ...	...
(c) Debts for law-expenses	The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit or loss.	...
(d) Debts for interest on debentures or other loans.	...		
(e) Unclaimed dividends	9	
(f) Debts not enumerated above	Debts considered good for which the Company hold bills or other securities.	...
The amount set aside from profits to meet contingencies.	...	10	
The disposable balance for payment of dividends, etc.	...	Debts considered good for which the Company hold no security.	...
Claims against the Company not acknowledged as debts.	...	11	
Moneys for which the Company is contingently liable.	...	Debts considered doubtful and bad ... of the Company to be separately stated.	...
II. DEBTS AND LIABILITIES OF THE COMPANY.			
		IV. DEBTS OWING TO THE COMPANY.	
VI. RESERVE FUND.			
		V. CASH AND INVESTMENTS.	
VII. PROFIT AND LOSS.			
CONTINGENT LIABILITIES.			

TABLE B.

SEE SECTIONS 282 AND 295.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT STOCK COMPANIES.

I.—By a Company having a share Capital.

Rs. A. P.

For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ... 40 0 0

For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ... 20 0 0

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees ... 5 0

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 1,00,000 rupees ... 1 0 0

For registration of any increase of share capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :

Provided that no Company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.

For registering any document by this Act required or authorized to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up ... 5 0 0

For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ... 5 0 0

II.—By a company not having a share Capital.

Rs. A. P.

For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ... 40 0 0

For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ... 100 0 0

* See clauses 108 and 109 of the foregoing Table A.

For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.

For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ... 400 0 0

For registration of any increase on the number of members made after the registration of the company, in respect of every 50 members or less than 50 members, of such increase ... 5 0 0

Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any existing Company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

For registering any document by this Act required or authorized to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up ... 5 0 0

For making a record of, any fact hereby authorised or required to be recorded by the Registrar of companies, a fee of ... 5 0 0

FORM C.

SEE SECTION 134.

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

* The share capital of the company is Rs. divided into shares of each.

The number of shares issued is Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the company on the first day of January (or July) were:—

Debts owing to sundry persons by the company :

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the company on that day were :

Government securities [stating them], Rs.

Bills of exchange, hundis and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

* If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted.

THE SECOND SCHEDULE.

SEE SECTION 102.

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED.

pursuant to section 102 of the Indian Companies

Act, 19

Presented for filing by

THE INDIAN COMPANIES ACT, 19

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company.	Rs.
Divided into	Shares of Rs. each.
	Rs. Rs. Rs.
	Rs. Rs. Rs.
Names, descriptions and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of Rs. fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon which Rs. per share credited as paid.
	3. debenture Rs.
	4. Consideration.
Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price . Rs. Cash . " Shares . " Debentures . " Goodwill . Rs.

(a) For definition of vendor, see section 98 of the Indian Companies Act, 19 .

(b) See section 99 of the Indian Companies Act, 19 .

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or	Amount paid " payable.
Rate of the commission	Rate per cent.
Estimated amount of preliminary expenses.	Rs.
Amount paid or intended to be paid to any promoter. Consideration for the payment	Name of promoter Amount Rs. Consideration :—
Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

THE THIRD SCHEDULE.

SEE SECTION 149.

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY
LIMITED BY SHARES.

- 1st.—The name of the company is “The Eastern Steam Packet Company, Limited.”
- 2nd.—The registered office of the company will be situate in Calcutta.
- 3rd.—The objects for which the company is established are “the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object.”
- 4th.—The liability of the members is limited.
- 5th.—The share capital of the company is two hundred thousand rupees divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.					Number of shares taken by each subscriber.
1.	A. B. of,	merchant	...	...	200
2.	C. D.	"	"	...	25
3.	E. F.	"	"	...	30
4.	G. H.	"	"	...	40
5.	I. J.	"	"	...	15
6.	K. L.	"	"	...	5
7.	M. N.	"	"	...	10
Total shares taken					325

Dated the day of 19 .

Witness to the above signatures,
X. Y., of

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF
A COMPANY LIMITED BY GUARANTEE, AND
NOT HAVING A SHARE CAPITAL.*Memorandum of Association.*

1st.—The name of the company is "The Mutual Calcutta Marine Association, Limited".

2nd.—The registered office of the company will be situate in Calcutta.

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of

"2. C. D. of

"3. E. F. of

"4. G. H. of

"5. I. J. of

"6. K. L. of

"7. M. N. of

Dated the day of

Witness to the above-signatures.

X. Y., of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECED-
ING MEMORANDUM OF ASSOCIATION.*Number of Members.*

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) :— if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of

section 84 of the Indian Companies Act, 19, is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited,

I, _____, of _____ Company, Limited, being a Member of the _____ of _____ hereby appoint _____

as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.

Signed this _____ day of _____

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 19, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 19, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directors.

28. The directors shall be elected annually by the Company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 142

and 143 of the Indian Companies Act, 19, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

- " 1. A. B. of
- " 2. C. D. of
- " 3. E. F. of
- " 4. G. H. of
- " 5. I. J. of
- " 6. K. L. of
- " 7. M. N. of

Dated the day of 19 .

Witness to the above signatures.

X. Y., of

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF
A COMPANY LIMITED BY GUARANTEE, AND
HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The registered office of the company will be situate in Darjeeling.

3rd.—The objects for which the company is established are "the facilitating travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted

before he ceases to be a member, and the costs, charges and expenses of winding-up the same and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding fifty rupees.

6th.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
" 1. A. B. of 	200
" 2. C. D. of 	25
" 3. E. F. of 	30
" 4. G. H. of 	40
" 5. I. J. of 	15
" 6. K. L. of 	5
" 7. M. N. of 	10
Total shares taken 	325

Dated the day of 19 .

Witness to the above signatures.

X. Y., of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Indian Companies Act, 19, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of , merchant.
 " 2. C. D. of
 " 3. E. F. of
 " 4. G. H. of
 " 5. I. J. of
 " 6. K. L. of
 " 7. M. N. of

Dated the day of 19 .

Witness to the above signatures.

X. Y., of

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF
 AN UNLIMITED COMPANY HAVING A SHARE
 CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company."

2nd.—The registered office of the company will be situate in Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q. of Bombay, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.				Number of shares taken by each Subscriber.
" 1. A. B. of	...	...	...	3
" 2. C. D. of	...	...	...	2
" 3. E. F. of	...	...	...	1
" 4. G. H. of	...	...	...	2
" 5. I. J. of	...	...	...	2
" 6. K. L. of	...	...	...	1
" 7. M. N. of	...	...	...	1
Total shares taken ...				12

Dated the day of 19

Witness to the above signatures.

X. Y., of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Indian Companies Act, 19 , shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of , merchant.
 " 2. C. D. of
 " 3. E. F. of
 " 4. G. H. of
 " 5. I. J. of
 " 6. K. L. of
 " 7. M. N. of

Dated the day of 19 .

Witness to the above signatures.

X. Y., of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

SEE SECTION 31.

Summary of Share Capital and Shares of the Company, Limited, made up to the day of

19 (being the fourteenth day after the date of the first ordinary general meeting in 19).

Nominal share capital Rs. divided into* { shares of Rs. each
 { shares of Rs. each

Total number of shares taken up* to the day of 19 which number must agree with the total shown in the list as held by existing members.

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash

Number of shares issued as partly paid up to the extent of per share otherwise than in cash... }

† There has been called up on each of shares ... Rs.

There has been called up on each of shares ... Rs.

There has been called up on each of shares ... Rs.

† Total amount of calls received, including payments on application and allotment ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share ... Rs.

Total amount of calls unpaid Rs.

*When there are shares of different kinds or amounts (e.g., Preference and Ordinary or Rs. 200 or Rs. 100), state the numbers and nominal values separately.

†Where various amounts have been called or there are shares of different kinds state them separately.

‡Include what has been received on forfeited as well as on existing shares.

Names and addresses of the persons who are the Directors of the _____, Limited, on the _____ day of _____ 19____.

Names.	Addresses.

(Signature) _____

(State whether manager or secretary) _____

THE FOURTH SCHEDULE.

PROVISIONS REFERRED TO IN SECTION 315 OF THE
ACT.

Provisions relating to—

The conclusiveness of certificates of incorporation ; [S. 23.]

The particulars as to directors and mortgage debt; [8. 31.]

Requirements as to annual balance sheet; [Ss. 76, 77,
78.]

Statutory meetings; [S. 81.]

Restrictions on appointments or advertisement of directors; [S. 88.]

Obligations of a company when no prospectus [S. 102.]
is issued :

Restrictions on commencement of business ; [S. 107.]

Returns as to allotments ; [S. 108.]

Registration of mortgages and charges ;

114, 115
116, 118

119, 120
121.]

Filing of accounts of receiver and manager ;	[S. 123.]
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The appointment and remuneration, and powers and duties of auditors ;

Notice by liquidator in voluntary winding-up of his appointment; [S. 233]

Rights of creditors in a voluntary winding-up; [S. 234.]

Requirements as to companies established outside British India. [S. 310.]

Folio in register ledger containing particulars.		ACCOUNT OF SHARES.	
NAMES, ADDRESSES AND OCCUPATIONS.		ACCOUNT OF SHARES.	
Name in full.		Number of Shares held by existing Members at Date of Return.	REMARKS.
Father's name.		Number of Shares transferred since the Date of the Last Return by Persons who are still Members.	
Address.		Number of Shares transferred since the Date of the Last Return by Persons who have ceased to be Members.	
Occupation or caste.			

† The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the Remarks column immediately opposite the particulars of each transfer.

THE FIFTH SCHEDULE.

(See section 323.)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
1882 ...	VI	The Indian Companies Act, 1882 ...	So much as has not been repealed.
1887 ...	VI	The Indian Companies Act (1882) Amendment Act, 1887	The whole.
1891 ...	XII	The Amending Act, 1891 ...	So much of the Second Schedule as relates to the Indian Companies Act, 1882.
1895 ...	XII	The Indian Companies (Memorandum of Association) Act, 1895.	The whole.
1900 ...	IV	The Indian Companies (Branch Registers) Act, 1900 ...	The whole.
1910 ...	IV	The Indian Companies (Amendment) Act, 1910 ...	The whole.

(STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to revise and consolidate the Indian law on the subject of Joint-Stock Companies on the lines of recent English legislation. The law on this subject in India is contained in the Indian Companies Act, 1882, which was modelled closely on the English law in force in 1877. Since 1882 the Indian law has been added to by four amending Acts, namely, the Indian Companies Act Amendment Act, 1887; the Indian Companies (Memorandum of Association) Act, 1895; the Indian Companies (Branch Registers) Act, 1900, and the Indian Companies (Amendment) Act, 1910. The substantial additions, however, which have been made to the English law by the long series of Acts passed between 1879 and 1908 have not, with the exception of the matters dealt with in the four small amending Acts above-mentioned, been adopted in the Indian law. The more important of the later English Acts are the Companies Act, 1879; the Companies Act, 1880; the Companies (Winding up) Act, 1890; the Directors Liability Act, 1890; the Companies Act, 1900; the Companies Act, 1907; and the Companies (Consolidation) Act, 1908. The last named Act consolidated the English law into a convenient code and this code has been taken as the model of the present Bill.

Among the new and important provisions introduced into Indian Company law by this Bill are those relating to:—(a) the preparation of a statutory report by a company limited by shares before the first general meeting (clause 81); (b) the appointment and advertisement of directors (clauses 88 and 89); (c) the prospectus and statement in lieu of prospectus (clauses 96 to 104); (d) restrictions on proceeding to allotment (clauses 105 and 106); (e) restrictions on commencing business (clause 107); (f) the appointment, remuneration and duties of auditors (clauses 142 and 143); (g) the registering of information regarding certain kinds of mortgages and charges (clauses 113 to 125); and (h) the registering of information regarding companies situated outside British India but operating therein (clause 310).

The present Bill follows the English Act not merely in its general principles but in its detailed arrangement and expression, wherever possible, as it is considered a matter of the first importance to have the Indian law as uniform as possible with the English law, except where local circumstances demand a modification in substance.

It has been considered necessary to depart from the English law on the subject of the winding up of Companies by order of the Court, and in place of the provisions introduced into English law by the Companies (Winding up) Act, 1890, the procedure of the existing Indian law has been in the main retained. This procedure leaves the discretion in the matter of winding up in the hands of the Court, whereas in the English law important functions are exercised by the Board of Trade, by Official Receivers, and by Committees of Inspection. On the subject of the annual balance sheet the provisions of the existing Indian law have been retained where these appeared more complete than the provisions of the English law, and the prescribed form of balance sheet has also been retained (clauses 75 to 78).

In order to make inspection in the interests of shareholders obtainable without difficulty where a case for such inspection has been made out, the Registrar of Joint-Stock Companies has been empowered to demand from any company an explanation of anything that is not clear in its balance sheet or other returns submitted to him, and the Company will be liable to a penalty if it fails to provide a full and true statement to the Registrar, when called upon. A report from the Registrar will form a ground on which the Local Government may order an inspection of the affairs of a company (clauses 135 and 136).

In regard to the qualifications of auditors, a matter on which the English law imposes no restriction, a provision has been inserted authorising Local Governments to issue certificates for the auditing of companies' accounts to approved persons in accordance with rules to be framed for the purpose and restricting the audit of companies' accounts to persons holding such certificates. (Clause 142 (1) and (2).)

It has not been thought necessary to include the provision of the English Act (Section 40) whereby a company is empowered to return accumulated profits in reduction of paid-up share capital.

The other matters on which modifications have been made in the English law are of minor importance. The insertion of explanations based on case law has been generally avoided, but in one or two cases where decisions of the Courts have added to or explained the law, it has been thought desirable to expand or modify the wording of the English Act.

W. H. CLARK.

The 20th March 1912.

V K 2

Notes on clauses.

Definition of "existing Company."—The Indian Companies Act makes no reference to Act XLIII of 1850 which, though repealed, may well be in force as to such Companies, if any, registered under it as have not been registered under Act XIX of 1857. If any exist, they will be covered by the definition in the Bill.

Clause 10 (3).—This clause requires the sanction of the Governor General in Council to the use of words implying the patronage of the Crown or Government, as part of the name of a Company.

Clauses 11, 12 and 13.—The Court in the corresponding provisions of the present law is the High Court. There seems no reason why the Court here should not be, as it is in the English law, the Court having jurisdiction to wind up. If a Court has jurisdiction to wind up, it should have power to sanction an alteration of the objects of a Company. The Bill provides for this.

Clause 37.—The Court in section 58 of the Indian Companies Act to which this clause corresponds is inconsistent with the Court mentioned in section 55 of that Act reproduced as clause 35. In the corresponding sections (sections 30 and 32) of the Act of 1908, the Court is the High Court. It is inconsistent that a Court which cannot order inspection can rectify the register, and in the draft Bill it has been thought safer to follow the English law.

The proviso to this clause was reproduced in the Act of 1882 from the Act of 1866, which was in turn reproduced from section 35 of the English Companies Act, 1862. The proviso as it stood in that Act ran as follows "provided that the Court, *if a Court of Common Law*, may direct an issue to be tried, in which any question of law may be raised, and a writ of error on appeal, *in the manner directed by 'the Common Law Procedure Act, 1854,' shall lie.*" The words italicised were repealed by the Statute Law Revision Act, 1881, owing to the amalgamation of the Common Law and equity jurisdiction by the Judicature Act, 1875. The object of the provision thus set out was obvious. In the judicial interpretation of the proviso, the Indian Courts have decided that the appeal lies in any event, *vide* Amrita Lal Ghose *versus* Srish Chunder Chowdhry, Indian Law Reports, Calcutta 26, page 945. The proviso has been modified so as to allow an appeal, only on a point of law.

After clause 48 the provision of section 40 of the English Act of 1908 would naturally follow. Lord Justice Buckley considers it a section that in so far as it is understandable at all (*vide* page 125 of his edition of the Act) is unnecessary, and Mr. Hamilton, one of the drafters of the Act of 1908, at page 53 of his book on Company Law, says: "The only effect of exercising the powers conferred by this section is to increase the liability of the shareholders by the amount paid to them out of accumulated profits which could be distributed without resorting to the section." The best opinion appears to be that the section is practically useless and unnecessarily complicated. It has therefore been omitted.

Clause 52.—Reference is made in the corresponding section 44 of the Companies Act, 1908, to the confirmation of a special resolution and this phraseology is employed in several places with rather confusing results. A resolution does not become a special resolution till it is confirmed, and therefore to refer to the confirmation of a special resolution seems inaccurate. This difficulty is more noticeable in connection with clause 55. The use of the words "and confirmed" in the corresponding section 47 of the Act of 1908 are confusing. By clause 54 (2), which corresponds with section 46 of the Companies Act, 1908, a resolution for reducing share capital must be a special resolution, and if it is a special resolution, it must have been confirmed. It seems sufficient to refer to the passing of a resolution for reducing share capital in clause 55. The wording of the English Act of 1908 in this respect is much less clear than that of the Act which it repealed and causes considerable confusion by referring to confirmation by the Court and confirmation by the Company.

Clause 63.—Section 3 (1) of the General Clauses Act, 1897, gives an interpretation to the word "abets" which makes further qualification unnecessary.

Clause 66.—The words in section 57 of the Companies Act, 1857, which this section reproduces, "or any Company already registered as a Limited Company may re-register under this Act," have been omitted. It is conceived that they are useless as no Company gains any advantage by re-registration in the circumstances stated—Buckley's Company Law, page 150. The concluding words of section 57 (2) of the Companies Act, 1908, are not reproduced as they are unnecessary. They are rendered necessary in the English Act by the construction clauses in the various English Acts thereby superseded.

Clause 67.—For the words "increased capital" in section 58 (a) of the Act of 1908, the words "the amount by which its capital is so increased" have been substituted. This gives effect to the actual intention, which is not altogether clear from the drafting in the Act of 1908.

Clause 82.—The clause which is based on section 66 of the Act of 1908 can only apply to a Company which has a share capital. To make this clear additional words have been inserted.

Clause 85 (3).—This sub-section has been inserted for drafting purposes to avoid reference to the confirmation of a special resolution.

Clause 85 (5).—This sub-section has been inserted to clear the point now settled by the *Chillington Iron Company*, 29 Chancery Division, 159.

Clause 90, corresponding with section 74 of the English Act.—Section 92 of the Act of 1882 has an explanation excluding from its operations acts done by a liquidator after his appointment has been shown to be invalid. This should equally apply to the acts of Directors and Managers in similar circumstances—see *Bridport Old Brewery Company*, 2 Chancery, 191, *Harben versus Philips*, 23 Chancery Division, 14, 27 and 34, *Tyne Mutual versus Brown*, 74 L. T. 253. A proviso to this clause has accordingly been inserted.

Clause 97.—The addition of the second proviso to clause (f) of this clause gives effect to the decision in *Brookes versus Hansen*, 1906, 2 Chancery, 129.

Clause 104.—The word “misleading” has been inserted before the word “untrue” to give effect to the decision in *Greenwood versus The Leather Shod Wheel Company*, 1900, 1 Chancery, 421, 434.

Clause 105, sub-clause (1) (b).—The insertion of the words “in cash” give effect to the decision in *Mears versus The Western Canada Pulp and Paper Company, Limited*, 1905, 2 Chancery, 353 C. A.

Clause 111.—The authority in clause 73 (A) of the Indian Companies Act, 1882, is the Governor General in Council. The Local Government which generally replaces the Board of Trade appears sufficient.

Clause 129.—A power to order inspection as in clause 35 has been added.

Clause 135.—This is a new clause giving power to the Registrar to call for information or explanation in the case of reports, etc., submitted to him by a Company. Failure to furnish the information, or if the Registrar considers that the information furnished discloses an unsatisfactory state of affairs, involves a report of the matter to the Local Government. On such a report the Local Government may by clause 136 direct an investigation by an Inspector.

Clause 142.—A new provision requiring all auditors of Companies to hold a certificate from the Local Government has been inserted.

Clause 178 (1).—The defect in the corresponding section of the English law which was cured by the decision in the English, Scottish, etc., Bank, 1893, 3 Chancery, 385, 393, has been amended in the Bill.

Clause 187, sub-clause (vi).—The corresponding law in the Act of 1882, section 128 (c), contains the words “any other reason of a like nature.” The words were inserted owing to the decision in *ex-parte Spackman, I. H. and T.*, 259, and similar cases, but of late the Courts have not applied the *ejusdem generis* rule so strictly, see *Amalgamated Syndicate*, 1897, 2 Chancery Division, 600, *Melson and Company*, 1906, 1 Chancery, 841, *Sailing Ship Kentmere*, 1897, W. N. 58, *Crigglestone Coal Company*, 1906, 2 Chancery, 327, *Australian Joint Stock Company*, 1897, W. N. 48. These words therefore have been omitted to prevent these later decisions being defeated.

Clause 249.—The additional words at the end of this clause give effect to the English rulings, see *Home Investment Company*, 14 Chancery, 167.

Clause 264.—Sub-clause (2) embodies the decision in *Wheatly versus Silk Stone Coal Company*, 29 Chancery, 715, see also *Florence Land Company*, 10 Chancery, 530. It also gives some indication of the meaning of the term “floating” charge and embodies the explanation in the *Government Stock Company versus Manilla Rail Company*, 1897, A. C. 81.

Clause 310.—The provisions have been assimilated to those in clause 72.

Schedule I, Table A, clause 64.—In framing Table A in the Act of 1908, it has been forgotten that after the issue of the new Table A in 1906 on which the table is based the Companies Act, 1907, was passed, section 24 (3) of which has been embodied in section 68 of the Act of 1908, clause 84 of the Bill. It is therefore necessary to alter the clause in Table A so as to deprive Companies which are shareholders in other Companies of the right to vote by proxies so long as there is in force a resolution of its Directors under section 68 (clause 84 of the Bill).

Schedule III, Form C.—Clause 16 (3), section 10 of the Act of 1908, provides that in the case of a Company limited by guarantee the articles, if the Company has a share capital, must state the amount of share capital with which the Company proposes to be registered. In Schedule III, Form C of the English Act, a form of articles of association of a Company limited by guarantee and having a share capital is given, but it does not state the amount of share capital with which the Company proposes to be registered, and is therefore defective. The defect has been remedied in the Bill.

Table shewing distribution of repealed Acts.

I.

INDIAN COMPANIES ACT, 1882.

Section of Indian Com- panies Act, 1882.	Subject-matter.	Clause in Bill.
1	Short title	1.
1	Local extent	1.
1	Commencement	1.
2	Repeals	323.
3	Interpretation-clause	2.
4	Prohibition of partnerships exceeding certain number	3.
5	Division of Act	No correspond- ing clause.
6	Mode of forming Company	4.
6	[Explanation—under section 6]	Omitted.
7	Mode of limiting liability of members	4.
7	Directors with unlimited liability	69.
8	Memorandum of association of a Company limited by shares	5.
9	Memorandum of association of a Company limited by guarantee	6.
10	Memorandum of association of an unlimited Company	7.
11	Signature of memorandum of association	8.
11	[Effect of memorandum of association]	20 (1)
12	Power of certain Companies to alter memorandum of association.	9 and 49.
13	Power to Company to reduce capital	54 and 60.
14	Company to add "and reduced" to its name for a limited period.	56.
15	Company to apply to the Court for an order confirming reduction.	55.
15	[Order of the Court confirming reduction]	56, 57.
15	[Creditors not to object in certain cases]	59.
15	[Court may require the Company to publish reasons for the reduction.]	64.
16	Creditors may object to reduction and list of objecting creditors to be settled by Court.	57.
17	Court may dispense with consent of creditor on security being given for his debt.	58.
18	Order and minute to be registered.	60.

Section of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
19	Minute to form part of memorandum of association . . .	61 and 62.
20	Saving of rights of creditors who are ignorant of proceedings .	62.
21	Registered minute to be embodied in memorandum of association.	61.
22	Penalty on concealment of name of creditor . . .	63.
23	Power to reduce capital by cancellation of unissued shares .	49.
24	Shares may be divided into shares of smaller amount . . .	49.
25	Special resolution to be embodied in memorandum of association	49 (3).
26	Special provisions as to associations formed for purpose not of gain.	25.
27	Company may have some shares fully paid, and others not .	48.
28	Manner in which shares are to be issued and held . . .	No corresponding clause.
29	Transfer may be registered at request of transferor . . .	33.
30	Warrant of limited-shares fully paid up may be issued in name of bearer.	42.
31	Effect of share-warrant	43.
32	Re-registration of bearer of a share-warrant in the register .	44.
33	Regulations of the Company may make the bearer of a share-warrant a member.	45.
34	Entries in register where share-warrant issued . . .	46.
35	<i>Stamps on share-warrants, etc.</i> —(repealed by Indian Stamp Act, 1899).	...
36	Power of Companies to change name	10.
37	Regulations to be prescribed by articles of association . . .	16.
"	[Details of articles of association]	18, 6(2) and 7(2).
38	Application of table A	17.
39	Signature of articles of association	18.
"	[Effect " "]	20.
40	Registration of memorandum of association and articles of association.	21.
"	[Registration fees as in tables B and C]	282.
41	Effect of registration	22, 23(1).
42	Copies of memorandum and articles to be given to members .	24.
43	Prohibition against identity of names in Companies . . .	10.

Section of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
44	Nature of interest in Company	27.
45	Definition of "member"	29.
46	Transfer by personal representative	34.
47	Register of members	30.
47	(Particulars to be entered in the register of Companies where share-warrant issued.)	47.
48	Annual list of members	31.
49	Particulars to be contained in annual summary	31 (2) (k), (l), (j).
50	Penalty on Company, etc., not keeping a proper register	31 (4).
51	Company to give notice of consolidation of or conversion of capital into stock.	50.
52	Effect of conversion of shares into stock	51.
53	Entry of trusts on register	32.
54	Certificate of shares or stock	28.
55	Inspection of register	35.
56	Power to close register	36.
57	Notice of increase of capital and members to be given to Registrar.	52.
58	Remedy for improper entry or omission of entry in register	37.
59	Notice to Registrar of rectification of register	38.
60	Register to be evidence	39.
61	Liability of present and past members of Company	181.
61	[<i>Explanations I and II</i> —under section 61]	No corresponding provision.
62	Liability of director whose liability is unlimited	182.
63	Registered office of Company	71.
64	Notice of situation of registered office	71.
65	Publication of name by a limited Company	72.
66	Penalties on non-publication of name	73.
67	Contracts how made	92.
68	Register of mortgages	127.
68	[<i>Explanation</i> —under section 68]	113.
69	Certain Companies to publish statement entered in schedule	134.
70	List of directors to be sent to Registrar	91 (1).

Section of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
71	Penalty on Company not keeping register of directors	91 (2).
72	Promissory notes, bills of exchange and hundis	93.
73	Prohibition against carrying on business with less than seven members.	145.
74	General meeting of Company	74.
74	Balance-sheet	75, 76, 77.
74	Audit	78.
74	(Penalty for default in complying with any of the foregoing provisions of section 74.)	78.
75	Company to hold meeting within six months after registration .	81.
76	Power to alter regulations by special resolution	19 (1).
76	Power to make liability of directors unlimited	70.
77	Definition of "special resolution"	85.
78	Provision where no regulations as to meetings	83.
79	Registration of special resolutions	86.
80	Copies of special resolutions to be embodied in articles of association.	86.
81	Execution of deeds abroad	94.
82	Examination of affairs of Company by inspectors	136.
83	Application for inspection to be supported by evidence	137.
84	Inspection of books	138.
85	Result of examination how dealt with	139.
86	Power of Company to appoint inspectors	140.
87	Report of inspectors to be evidence	141.
88	Prospectus, etc., to specify dates and names of parties to certain prior contracts.	Cf. 97, 98, 99, 100, 101.
89	Service of notices on Company	146.
89	[Service of notices on Registrar of Joint-Stock Companies]	147.
90	Rules as to notices by letter	No corresponding clause.
91	Authentication of notices by Company	148.
92	Evidence of proceedings at meetings	87.
92	[Explanation—under section 92]	90.
93	Provision as to costs in suits brought by certain limited Companies.	318.

Section of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
94	Plaint in suits against members	No corresponding clause.
95	Forms to be used	} 149.
	Governor General in Council may alter forms	
96	Power for Companies to refer matters to arbitration	150.
97	Power to alter or revoke agreements for reference	151.
98	Agreements to be carried into effect	152.
99	Reference to arbitrator	153.
100	Reference to two or more arbitrators	154.
101	Appointment of arbitrators by Companies	155.
102	Appointment of arbitrators by Local Government	156.
103	Appointment of arbitrators by Companies to supply vacancies.	157.
104	Appointment of arbitrators by Local Government to supply vacancies.	158.
105	Appointment of arbitrator not revocable	159.
106	Appointment of umpire by arbitrators	160.
107	Appointment of umpire by Local Government	161.
108	Appointment of umpire by arbitrators to supply vacancy	162.
109	Appointment of umpire by Local Government to supply vacancy.	163.
110	Succeeding arbitrators and umpires to have powers of predecessors.	164.
111	Reference to umpire	165.
112	Power for arbitrators, etc., to call for books, etc., and examine witnesses on oath.	166.
113	Procedure in the arbitration	167.
114	Arbitration may proceed in absence of companies	168.
115	Several awards may be made	169.
116	Awards made in due time to bind all parties	170.
117	Power for umpire to extend period for making his award	171.
118	Awards not to be set aside for informality	172.
119	Awards to be obeyed	173.
120	Agreements, arbitrations and awards to have effect	174.
121	Costs of arbitration and award	175.

Section of Indian Companies Act, 1883.	Subject-matter.	Clause in Bill.
122	Payment of costs	176.
123	Submission to arbitration to be filed in Court	177.
124	Meaning of "contributory"	183.
125	Nature of liability of contributory	184, 186.
126	Contributories in case of death	185.
127	Contributories in case of insolvency	186.
128	Circumstances under which Company may be wound up by Court.	187.
129	Company when deemed unable to pay its debts	188.
130	Definition of "the Court"	190.
130	Definition of "debts"	No corresponding clause.
131	Application for winding-up to be made by petition	192 (1).
131	[Petition to contain alleged facts]	No corresponding provision [cf. 192 (1) (c)].
131	[Effect of order on petition]	193.
131	[Petition in the case of a Life-assurance Company]	320.
131	<i>Explanation</i> —under section 131	No corresponding clause.
132	Contributory when not qualified to present winding-up petition	192.
133	Commencement of winding-up by Court	194.
134	Court may grant injunction	195.
134	[Court may appoint an official liquidator]	201 (2).
135	Course to be pursued by Court on hearing petition	196.
136	Suits to be stayed after order for winding-up	197.
137	Copy of order to be forwarded to Registrar	198.
137	[Effect of order on servants of the Company]	198.
138	Power of Court to stay proceeding	199.
139	Effect of order on share-capital of Company limited by guarantee.	181 (2).
140	Court may have regard to wishes of creditors or contributories.	200.
140	[Meetings of creditors or contributories]	270.
141	Appointment of official liquidator	201.
142	Resignations, removals, filling-up vacancies and compensation .	202.

Section of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
143	Style and duties of official liquidator	203.
144	Powers of official liquidator	204.
145	Discretion of official liquidator	205.
146	Appointment of attorney or vakil to official liquidator	206.
147	Collection and application of assets	209 (1).
148	Provision as to representative contributories	209 (2).
149	Power of Court to require delivery of property	210.
150	Power of Court to order payment of debts by contributory	211.
151	Power of Court to make calls	212.
152	Power of Court to order payment into bank	213.
153	Regulation of account with Court	214.
154	Provision in case of representative contributory not paying moneys ordered.	185 (2).
155	Order conclusive evidence	215.
156	Court may exclude creditors not proving within certain time	216.
157	Court to adjust rights of contributories	217.
158	Court to order costs	218.
159	Dissolution of Company	219 (1).
160	Registrar to make minute of dissolution of Company	219 (2).
161	Penalty for not reporting dissolution of Company	219 (3).
162	Power of Court to summon persons before it suspected of having property of Company.	220 (1), (3), (4).
163	Examination of parties by Court	220 (2).
164	Power to arrest contributory about to abscond or to remove or conceal any of his property.	222.
165	Power of Court cumulative	223.
166	Power to enforce orders	224.
167	Order made in any Court to be enforced by the Courts	225.
168	Mode of dealing with orders to be enforced by other Courts	226.
169	Appeals from orders	227.
170	Judicial notice to be taken of signature of officers	276.
171	Special Commissioners for receiving evidence	277.
172	Affidavits, etc., may be sworn in British India, Great Britain or Ireland or abroad before any competent Court or person.	278.
173	Circumstances under which Company may be wound-up voluntarily.	228.

Section of Indian Com- panies Act, 1882.	Subject-matter.	Clause in Bill.
173	[Extraordinary resolution]	85 (1).
174	Commencement of voluntary winding-up	229.
175	Effect of voluntary winding-up on status of Company	230.
175	[Transfers of shares after winding-up void]	258 (1).
176	Notice of resolution to wind-up voluntarily	231.
177	Consequence of voluntary winding-up	232.
178	Effect of winding-up on share-capital of Company limited by guarantee.	181 (2), 184.
179	Power of Company to delegate authority to appoint liquidators .	236.
180	Arrangement when binding on creditors	237 (1).
181	Power of creditor or contributory to appeal	237 (2).
182	Power for liquidators or contributories in voluntary winding-up to apply to Court.	246.
182	[Such application to be made by motion]	No correspond- ing provision.
183	Power of liquidators to call general meeting	247.
184	Power to fill up vacancy in office of liquidators	235.
185	Power of Court to appoint liquidators	232 (viii), (ix).
186	Liquidators on conclusion of winding-up to make up an account.	248 (1), (2).
187	Liquidators to report meeting to Registrar	248 (3), (4)
188	Costs of voluntary liquidation	249.
189	Saving of rights of creditors	250.
190	Power of Court to adopt proceedings of voluntary winding-up	251.
191	Power of Court, on application, to direct winding-up subject to supervision.	252.
192	Petition for winding-up subject to supervision	253.
193	Court may have regard to wishes of creditors	254.
193	[Meetings of creditors or contributories]	254.
194	Power to Court to appoint additional liquidator in winding-up subject to supervision.	255.
195	Effect of order of Court for winding-up subject to supervision .	256. .
196	Appointment in certain cases of voluntary liquidators to office of official liquidators.	257.
197	Dispositions after commencement of winding-up avoided	258 (2).
198	Books of Company to be evidence	271.

Section of Indian Companies Act, 1932.	Subject-matter.	Clause in Bill.
199	Disposal of books, accounts and documents of Company	273.
200	Inspection of books	272.
200A	Priority of debts	261.
201	General scheme of liquidation may be sanctioned	265 (1) (i), (ii).
202	Power to compromise	265 (1) (iii).
203	Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise.	178.
204	Power for liquidators to accept shares, etc., as a consideration for sale of property of Company.	238.
205	Mode of determining price	239.
206	Appointment of arbitrator when questions are to be determined by arbitration.	240.
207	Vacancy of arbitrator to be supplied	241.
208	Appointment of umpire	242.
209	Power of arbitrators to call for books, etc.	243.
210	Costs to be in discretion of arbitrators	244.
211	Submission to arbitration may be filed in Court	245.
212	Certain attachments, distresses and executions to be void	263.
213	Fraudulent preference	262.
214	Power of Court to assess damages against delinquent directors and officers.	266.
214	[<i>Explanations I and II</i> —under section 214]	No corresponding clause.
215	Penalty on falsification of books	267.
216	Prosecution of delinquent directors in case of winding-up by Court.	268 (1).
217	Penalty for false evidence	269.
218	Winding-up may be referred to District Court	} No corresponding clauses.
219	Transfer of winding-up from one District Court to another.	
220	Constitution of registration-office	319.
221	Application of Act to Companies formed under Act XIX of 1857 or VII of 1860.	283.
221.	[Power of altering regulations by special resolution extends to altering certain provisions in Table B of Act XIX of 1857.]	19 (2).
222	Application of Act to Companies registered under Act XIX of 1857 or VII of 1860.	284.
223	Mode of transferring shares	285.

Section of Indian Com- panies Act, 1882.	Subject-matter.	Clause in Bill.
224	Companies capable of being registered	286 (1).
225	Regulations as to registration of existing Companies	286 (2).
225	[Exclusion of existing Life-assurance Companies from register- ing under this Part of the Act.]	No correspond- ing clause.
226	Definition of " Joint-Stock Company "	287.
227	Requisitions for registration by Companies	288.
228	Requisitions for registration by existing Company not being a Joint-Stock Company.	289.
229	Power for existing Company to register amount of stock instead of shares.	288 (1).
230	Authentication of statements of existing Companies	290.
231	Registrar may require evidence as to nature of Company . .	291.
232	On registration of banking Company with limited liability, notice to be given to customers.	292.
233	Exemption of certain Companies from payment of fees	293.
234	Company to change name	294.
235	Certificate of registration of existing Companies	295.
236	Certificate to be evidence of compliance with Act	22, 23 (1).
237	Transfer of property to Company	296.
238	Registration under this Act not to affect obligations incurred previously to registration.	297.
239	Continuation of existing suits	298.
240	Effect of registration under Act	299.
241	Power of Court to restrain further proceedings	301.
242	Order for winding-up Company	302.
243	Winding-up unregistered Companies	303.
243	[Exceptions and additions to the application of provisions of the Act to winding-up unregistered Companies.]	304.
244	Who to be deemed a contributory in the event of Company being wound up.	305.
245	Power of Court to restrain further proceedings	306.
246	Effect of order for winding-up Company	307.
247	Provision in case of unregistered Company	308.
248	Provisions of this Part of Act cumulative	309.
249	Company not to buy its own shares	54 (i).

Section. of Indian Companies Act, 1882.	Subject-matter.	Clause in Bill.
250	Saving of existing proceedings for winding-up	317.
251	Saving of conveyances	318.
252	Cognizance of offences	} 311.
	Punishment of offences committed within Presidency-towns . .	
253	Power to make orders as to costs	No correspond- ing clause.
254	Power of High Court to make rules	279.
255	Construction of "Registrar of Joint-Stock Companies" in Act XXI of 1860.	321.
256	Act not to apply to Banks of Bengal, Madras or Bombay . .	322.

II.

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION)
ACT, 1895.

Section of Indian Com- panies (Memo- randum of Association) Act, 1895.	Subject-matter.	Clause in Bill.
1	Short title and commencement	} No correspond- ing clauses.
2	Sections 3 to 10 to be read with Act VI of 1882	
3	Definition of " deed of settlement "	300 (4).
3	Definition of " High Court	Not reproduced.
4	Powers for Company to alter objects or form of constitution subject to confirmation by High Court.	11, 300.
5	Particulars as to which Court must be satisfied before confirma- tion.	11 (3).
6	Powers of Court when confirming to impose terms and make order as to costs.	12.
7	Discretion conferred on Court	13.
8	Ground on which Court may confirm a proposed alteration, viz.—	
8 (a)	to change the place of the registered office	} 11 (1).
8 (b)	to carry on its business more economically	
8 (c)	to attain its purpose by improved means	
8 (d)	to change the area of its operations	
8 (e)	to carry on some other business	
8 (f)	to abandon any of the specified objects	
9 (1), (2) and (3)	Registration of order together with memorandum as altered for substituted memorandum and articles and consequences thereof.	14.
9 (1)	[Certificate to be conclusive evidence]	300 (2).
9 (4)	[Fee for registration]	282.
10	Effect of failure to register within three months	15.
11	Amendment of section 65 of Act VI of 1882	Not reproduced.

III.

THE INDIAN COMPANIES (BRANCH REGISTERS) ACT, 1900.

Section of Indian Companies (Branch Registers) Act, 1900.	Subject-matter.	Clause in Bill.
1	Short title, extent and commencement	} Not reproduced.
2(a)	Definition of "Company"	
2(b)	[Definition of "shares"]	
3(1) & (2)	Power to keep branch registers in the United Kingdom	40.
3(3), (4), (5) & (6)	[Entries in, and discontinuance of, British Register]	41.
4	Power to make rules and prescribe forms	149.
5	Construction with Act VI, 1882	Not reproduced.

W. H. VINCENT,

Secretary to the Government of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 TO 1909 (24 & 25 VICT., c. 87, 55 & 56 VICT., c. 14, AND 9 EDW. VII, c. 4).

The Council met at Government House, Calcutta, on Wednesday, the 10th January 1912.

PRESENT:

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.E., K.C.B., K.C.M.G., *presiding*,
and 52 Members, of whom 47 were additional Members.

ABSENCE OF GOVERNOR-GENERAL AND VICE-PRESIDENT OF THE COUNCIL.

The Hon'ble Sir Guy Fleetwood Wilson :

"In the absence of His Excellency at Bombay and owing to the lamented indisposition of the Vice-President, it devolves on me as senior Member of Council to preside at the deliberations of the Council to-day."

OATH OF OFFICE.

The following Additional Members made the prescribed oath or affirmation of their allegiance to the Crown :—

The Hon'ble MR. GULAM MUHAMMAD BHURGRI.
The Hon'ble MR. VINCENT.
The Hon'ble MR. CARR.
The Hon'ble MR. ARTHUR.
The Hon'ble MR. LYON.
The Hon'ble MR. SAUNDERS.
The Hon'ble KHAN BAHADUR MIAN MUHAMMAD SHAFI.
The Hon'ble MR. FREMANTLE.
The Hon'ble MAUNG MYE.
The Hon'ble MR. ENTHOVEN.
The Hon'ble MR. FYFFE.

The Hon'ble Sir James Meston : "With your permission, Sir, I beg to lay on the table, on behalf of the Hon'ble Finance Member, a statement* showing the proportion of appointments on Rs500 and over held by Indians and Europeans in 1910, as compared with 1903 and 1867. This is the statement which was promised in the Hon'ble Sir Guy Fleetwood Wilson's reply given to the question put by the Hon'ble Raja of Dighapatia at the meeting of Council held on the 24th March 1911.

I also seek permission to lay on the table certain returns† asked for by the Hon'ble Mr. Mudholkar in the question put by him at the meeting of Council held on the 22nd September 1911. Part of the question has already been replied to at the meeting before mentioned."

QUESTIONS AND ANSWERS.

The Hon'ble Mr. Gokhale asked :—

"Will the Government be pleased to state whether the sum of 50 lakhs for 'the promotion of truly popular education,' announced by His Excellency the Governor General on the day of the Coronation Durbar at Delhi, includes the present State expenditure on primary education or is in addition to it; and whether the grant is an annual one or is only a non-recurring allotment?"

The Hon'ble Sir Harcourt Butler replied :—

"The sum of 50 lakhs for 'promotion of truly popular education' announced by His Excellency the Governor General on the day of the Coronation Durbar at Delhi will be an Imperial grant in addition to the existing expenditure on primary education and will be an annually recurring grant."

The Hon'ble Mr. Gokhale asked :—

"Will the Government be pleased to state what Municipalities and District Boards or Councils in each Presidency or Province were invited to express an opinion on the Elementary Education Bill now before the Council, and how many of such bodies have expressed an opinion on the measure? Will the Government lay on the table copies of all opinions on the Bill received from Local Bodies by the various Local Governments and Administrations?"

The Hon'ble Mr. Syed Ali Imam replied :—

"All communications which have been received on the Elementary Education Bill have been printed as papers relating to the Bill and copies thereof have already been sent to all Hon'ble Members. A set of such of them as contain opinions or summaries of opinions of Municipalities and District Boards or Councils is laid on the table; the information which the Hon'ble Member desires will be found, so far as it can be obtained, in those papers."

The Hon'ble Mr. Gokhale :

"May I say in connection with this that what I want is opinions received by Local Governments and Administrations, not by the Government of India—all opinions received by Local Governments and Administrations."

The Hon'ble Mr. Syed Ali Imam :

"Sir, I shall be in a position to answer the question of the Hon'ble Member after further consideration."

*Vide Appendix A.

†Vide Appendix B.

The Hon'ble Mr. Gokhale asked :—

"Have the Government submitted their proposals on the subject of the position of Provincial Engineers to the Secretary of State for India? If so, when may the final orders of the Secretary of State be expected?"

The Hon'ble Mr. Gordon replied :—

"The despatch on the subject of the position of the Provincial Engineers of the Public Works Department was sent to the Secretary of State by the mail of the 10th August last. It is expected that a reply will be received at an early date."

The Hon'ble Mr. Subba Rao asked :—

"With reference to the reply given by the Hon'ble the Home Member to a question asked by me on the 22nd September last on the subject of the recruitment for the executive branch of the Provincial Service, will the Government be pleased to say whether they are now in a position to supply the information there requested."

The Hon'ble Sir A. Earle replied :—

"The necessary information has been obtained from Local Governments and a statement* is laid on the table which answers the first part of the question asked by the Hon'ble Member on the 22nd September 1911.

"As regards the second part of the question the Hon'ble Member is informed that the only Province where the executive branch of the Provincial Service is filled exclusively by promotion from the subordinate service is British Baluchistan. The reasons why such a course is adopted are (1) that residents of Baluchistan are not yet fitted for the work of an Extra Assistant Commissioner without considerable preliminary training in subordinate posts, and (2) that residents of other Provinces can only obtain knowledge of the special conditions obtaining in Baluchistan by working in subordinate posts."

The Hon'ble Mr. Subba Rao :

"Will the Government be pleased to say from what time and year such a course has been adopted in Baluchistan?"

The Hon'ble Sir Archdale Earle :

"I presume that this has always been the case. If the Hon'ble Member wishes for a more definite statement, I shall have to ask for notice."

CO-OPERATIVE SOCIETIES BILL.

The Hon'ble Mr. MacLagan moved that the Hon'ble Mr. Mudholkar and the Hon'ble Mr. Fremantle be added to the Select Committee appointed to report on the Bill to amend the law relating to Co-operative Credit Societies.

The motion was put and agreed to.

INDIAN LUNACY BILL.

The Hon'ble Sir Archdale Earle moved that the Bill to consolidate and amend the law relating to Lunacy be referred to a Select Committee consisting of the Hon'ble Sir J. L. Jenkins, the Hon'ble Mr. Syed Ali Imam, the Hon'ble Maulvi Syed Shamsul Huda, the Hon'ble Mr. Dadabhoy,

* Vide Appendix C.

the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Surgeon General Sir C. P. Lukis, the Hon'ble Mr. Kenrick, the Hon'ble Mr. Madge, the Hon'ble Mr. Vincent, the Hon'ble Mr. Carr, the Hon'ble Mr. Arthur and the mover.

The motion was put and agreed to.

INDIAN POST-OFFICE (AMENDMENT) BILL.

The Hon'ble Mr. Clark moved that the Bill to amend the Indian Post-Office Act, 1898, be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoy, the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur, the Hon'ble Sir Charles Stewart-Wilson, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Carr, the Hon'ble Mr. Saunders and the mover.

The motion was put and agreed to.

DELEGATION BILL.

The Hon'ble Mr. Syed Ali Imam : "The Bill before the Council is, as has been pointed out in the Statement of Objects and Reasons, a measure designed to facilitate delegation of executive powers and duties in respect of non-controversial matters. Those who are acquainted with the work of administration are aware that a stage has been reached in the affairs of the State when some measure of decentralisation has become an imperative necessity to simplify and improve our system of government in the direction of bringing the executive into closer touch with local conditions. The desire to centralise authority, however small or trifling, was capable of receiving gratification at a time when the administration of the country was free from the complexity with which it is burdened now. In the last 50 years India has taken long strides in the development of her moral and material resources. Each step has been synchronised with some form of legislation as is evidenced by the ponderous bulk of her Statute-book. To meet the requirements of her advancing social and political welfare an elaborate administrative machinery has grown up, and to obtain the very best results it seems to be unavoidable that within reasonable and cautious limits its action should be so regulated and adjusted as to give increased utility without impairing its efficiency. Problems of great moment are pressing themselves on the attention of the Government of India and the Local Governments. The legitimate aspirations of the people to take intelligent part in the concerns of their country rightly demand sympathetic consideration and earnest endeavour at the hands of the authorities, and to secure this it has become evident that there should be some relief at head-quarters from the wasteful expenditure of time and energy on the exercise of petty executive powers and duties. A careful examination of these by the Royal Commission on Decentralisation has clearly demonstrated the urgency of effecting devolution of such powers and duties on subordinate authorities. Numerous enactments dealing with multifarious details of the many branches of administration and their off-shoots have from time to time laid up an accumulation of a mass of unimportant centralisation of executive authority. The sections of these enactments relating to such centralisation are a legion in themselves, and any attempt on my part to place before the Council this formidable array will be inconsequential, as to realise the correct bearing of each of these would require an examination of the particular Act in which they find place. This will be a gigantic effort for our legislative assembly even if there was a disposition to spread out the winter sessions far beyond their usual length and without any appreciable break in the continuity of the sittings. When introducing this Bill, my Hon'ble colleague, Sir John Jenkins, depicted before the Council the extraordinary difficulties with which the Government of Bombay and the Government of India have met in the work of collecting and scheduling together the various enactments and their sections with a view to the

preparations of a general Decentralisation Act. But even if an extra turn of the screw be put on the patient labour of the secretariat and a fairly comprehensive schedule be produced, the result will hardly justify such devotion from the point of view of the usefulness of the undertaking. A general Decentralisation Act embodying specific amendment of every Act affected would involve cumbrous legislation without any uniformity of shape, not to speak of the rigidity and incompleteness inseparable from such a questionable course. On the other hand, an attempt to inflict on the deliberations of this Council sheaves of petty amending Bills is to court not only undue delay, but what is far more undesirable, the serious dislocation of its ordinary work of legislation. This will be particularly deplorable at the present juncture when a heavy programme of urgent legislative measures has to engage our undivided attention for some time to come. Mature and anxious considerations of the difficulties and objections that attach to our embarking on either of these two courses leave no option but to abandon them in favour of an Act of delegation to provide for devolution of authority in certain cases with proper safeguards and under effective control. The Bill before the Council gives prominence to the two principles that underlie its inception. On the one hand it provides to cover a wide area for the application of its provisions and on the other it jealously restricts its operation to cases for the disposal of which administrative convenience is effected without in the slightest degree endangering the liberty or the rights of the subject. The exclusion of the two Codes of Criminal and Civil Procedure and of any enactments relating to the constitution of the Civil Courts from the purview of this Bill is in itself sufficient to remove apprehension of the improper use of the powers conferred by the proposed legislation. A further exclusion is contained in clause (b) of section 4 of the Bill. It relates to cases of previous sanction or consent by a superior authority to the exercise of power under any enactment by an inferior authority. Even for administrative purposes this provision narrows down the scope of the Bill considerably, but regard for the principle of duality of control is the justification for its insertion in the Bill. It will be observed that these two exclusions are so far-reaching that it will be hard to find any matter of a truly controversial character in respect of which it is possible to make a delegation of power under this Bill in favour of a subordinate authority. Within the narrow limits of the scope of this Bill additional precautions have been taken by subjecting the powers of delegation to the conditions laid down in the various sub-clauses of section 5. These are intended to ensure publicity and invite criticism before a single devolution of power can be given effect to. I do not propose to dwell on all these conditions as they will be considered by Hon'ble Members in due course. But I venture to offer a few remarks on the conditions embodied in sub-clauses (6) and (7). Taken together these two sub-clauses mark a great departure in the relations of the Executive Government to the Legislative Councils of the country. This part of the Bill emphasises a point of view which is of growing interest in the affairs of India. To hold devolution of authority in abeyance till the draft notification has been considered by Hon'ble Members who may wish to put interpellations or move resolutions on the same, has, although in the present instance limited to the application of the provisions of this Bill, a deep significance. It is laden with potentialities and sets up a precedence of special value with regard to the association of the duly constituted representatives of the people with the executive administration of the country. It is the first glimpse in India of the analogy of the procedure adopted under some similar circumstances in the Houses of Parliament in England. True it is that the constitutional strength of a resolution of this Council is not more than merely advisory, but to seek that advice before action is taken denotes a large measure of the appreciation of the views of this assembly by Government. Should a draft notification evoke a hostile motion largely supported by Hon'ble Members representing the people, Government will be in a position to pause for a further consideration of the proposed action before final orders are passed. This is a feature of the Bill that will create a new bond of mutual help and co-operation which bids fair to open a new chapter in the public life of the country in its relation to administrative reforms.

"Before I close my submissions I should like to point out that legislative sanction to such delegation of powers and duties as is embodied in this Bill is neither novel nor unprecedented. The Port of London Act can be quoted as an instance in England. In India the principle of delegation has received legislative approval in Act V of 1868. Act XVIII of 1888 is illustrative in the case of Burma. In very recent times a striking example is found in the Indian Civil Procedure Code, 1908, where many minor matters that were part and parcel of the old law have by delegation devolved on the High or Chief Courts Rules Committees, whose action is subject to no legislative control but only the sanction of the executive Government. Numerous other instances can be quoted in which the direct application of the law has been delegated by Indian Acts to executive authority on the basis of a mere notification without any of the effective safeguards and precautions taken in the Bill before the Council.

"There is one more point to which I should like to make a passing reference. The Bill does not provide for the cancellation of an order of delegation once it is passed. Some of the opinions that we have received on this Bill seem to treat the silence as a grave omission. In this connection I need only point to section 21 of the General Clauses Act of 1897 which is a sufficient remedy for amending, varying or rescinding such an order.

"I trust, Sir, that on careful examination of the terms of this Bill, Hon'ble Members will agree with me that this is a modest measure of real and intrinsic usefulness that I have the honour to ask them to refer to a Select Committee for consideration. I move that the Bill be referred to a Select Committee consisting of the Hon'ble Sir J. L. Jenkins, the Hon'ble Sir G. M. Chitnavis, the Hon'ble Mr. Subba Rao, the Hon'ble Mr. Gokhale, the Hon'ble Babu Bhupendranath Basu, the Pandit Madan Mohan Malaviya, the Hon'ble Mr. Gates, the Hon'ble Mr. Phillips, the Hon'ble Mr. Mudholkar, the Hon'ble Sir Archdale Earle, the Hon'ble Mr. Lyon, the Hon'ble Mr. Arthur and myself."

The Hon'ble Mr. Gokhale : "Sir, I have no wish to offer any opposition to the motion before the Council, but because no opposition is offered at this stage, we should not on that account be understood—and in this I speak on behalf of several non-official members—we should not be understood to assent to the principle of the Bill. On the face of it, the Bill looks like asking the legislature to grant a blank cheque to the executive in certain matters. At the same time I see that several safeguards, and some of them important safeguards, have been provided. The measure, therefore, is one which requires to be subjected to close scrutiny, such as only a Select Committee can bring to bear upon it. While, therefore, we are willing that the Bill should go to the proposed Select Committee, we are anxious, as I have already said, that we should not on that account be understood to assent to the principle of the proposed delegation."

The motion was put and agreed to.

WHITE PHOSPHORUS MATCHES PROHIBITION BILL.

The Hon'ble Mr. Clark moved that the Bill to prohibit the importation, manufacture and sale of matches made with white phosphorus be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Sir V. D. Thackersey, the Hon'ble Mr. Phillips, the Hon'ble Surgeon General Sir C. P. Lukis, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Enthoven and the mover.

The motion was put and agreed to.

CENTRAL PROVINCES EXCISE BILL.

The Hon'ble Mr. Clark : "Sir, the motion standing in my name is that the Bill to consolidate and amend the Excise Law in the Central Provinces

be referred to a Select Committee. I have to ask the Council to allow me to withdraw that motion. I ought to explain for the information of Council that I ask for withdrawal today only because we have not yet received from the Central Provinces Administration their observations on the Bill. The Bill is a purely local one, which is only taken here because the Central Provinces have not got a Legislative Council of their own, and we cannot very well proceed without having their observations upon it."

The Council agreed and the motion was withdrawn.

LIFE ASSURANCE COMPANIES BILL.

The Hon'ble Mr. Clark moved that the Bill to provide for the Regulation of Life Assurance Companies be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoy, the Hon'ble Mr. N. Subba Rao, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Meredith, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Lyon, the Hon'ble Mr. Carr, the Hon'ble Mr. Enthoven, the Hon'ble Mr. Fyffe and the mover.

The motion was put and agreed to.

PROVIDENT INSURANCE SOCIETIES BILL.

The Hon'ble Mr. Clark moved that the Bill to provide for the Regulation of Provident Insurance Societies be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoy, the Hon'ble Mr. N. Subba Rao, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Meredith, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Lyon, the Hon'ble Mr. Carr, the Hon'ble Mr. Enthoven, the Hon'ble Mr. Fyffe and the mover.

The motion was put and agreed to.

INDIAN STAMP (AMENDMENT) BILL.

The Hon'ble Sir James Meston moved that the Bill further to amend the Indian Stamp Act, 1899, be referred to a Select Committee consisting of the Hon'ble Sir Guy Fleetwood Wilson, the Hon'ble Mr. Syed Ali Imam, the Hon'ble Maulvi Syed Shamsul Huda, the Hon'ble Mr. Dadabhoy, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Carr and the mover.

The motion was put and agreed to

ADJOURNMENT OF COUNCIL.

THE PRESIDENT: "That terminates the business of the Council to-day, and the Council will adjourn to Friday, the 23rd of February 1912, at 11 o'clock."

W. H. H. VINCENT,

*Secy. to the Government of India,
Legislative Department.*

CALCUTTA :

The 12th January 1912. }

APPENDIX A.

Statement showing the proportion of appointments on Rs. 500 and over held by Indians and Europeans in 1910 as compared with 1903 and 1867.

STATEMENT I—1903 as compared with 1867.

Number of posts on Rs. 500 and over	EUROPEANS AND EURASIANS.			HINDUS.			MUHAMMADANS.			INDIANS (i.e., HINDUS AND MUHAMMADANS).			TOTAL OF ALL CLASSES.		
	1867.	1903.	Increase = + decrease = -	1867.	1903.	Increase = + decrease = -	1867.	1903.	Increase = + decrease = -	1867.	1903.	Increase = + decrease = -	1867.	1903.	Increase = + decrease = -
			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.
	2,048	3,254	+59	99	508	+409	35	96	+63	184	606	+422	2,182	3,860	+1,678
			+59						+180			+332			+77

STATEMENT II—1910 as compared with 1903.

Number of posts on Rs. 500 and over	EUROPEANS AND EURASIANS.			HINDUS.			MUHAMMADANS.			INDIANS (i.e., HINDUS AND MUHAMMADANS).			TOTAL OF ALL CLASSES.		
	1903.	1910.	Increase = + decrease = -	1903.	1910.	Increase = + decrease = -	1903.	1910.	Increase = + decrease = -	1903.	1910.	Increase = + decrease = -	1903.	1910.	Increase = + decrease = -
			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.
	3,254	4,466	+37	508	782	+274	96	142	+44	606	924	+318	3,860	5,390	+1,530
			+37						+45			+52			+40

STATEMENT III—1910 as compared with 1867.

Number of posts on Rs. 500 and over	EUROPEANS AND EURASIANS.			HINDUS.			MUHAMMADANS.			INDIANS (i.e., HINDUS AND MUHAMMADANS).			TOTAL OF ALL CLASSES.		
	1867.	1910.	Increase = + decrease = -	1867.	1910.	Increase = + decrease = -	1867.	1910.	Increase = + decrease = -	1867.	1910.	Increase = + decrease = -	1867.	1910.	Increase = + decrease = -
			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.			Percent- age of increase or decrease.
	2,048	4,466	+118	99	782	+683	35	142	+107	184	924	+740	2,182	5,390	+3,208
			+118						+306			+590			+147

NOTE.—“Hindus” include all Indians other than Muhammadans.

APPENDIX B.

INFORMATION ASKED FOR BY THE HON'BLE RAO BAHADUR R. N. MUDHOLKAR.

In answer to Part (a) of his question.

Years.	Pay proper of British troops.	Payments to War Office for British troops.	Furlough allow- ances for British Service officers and men.	Indian Troop Service.
	Rs.	£	£	£
1885-86	2,88,74,061	552,299	62,490	311,591
1890-91	3,38,74,856	772,456	101,042	238,550
1895-96	4,33,51,816	729,520	98,497	250,736
1900-01	3,20,26,196	700,000	50,207	86,286
1901-02	3,17,61,648	64,010	94,074	196,521
1902-03	3,70,62,981	851,994	112,750	345,499
1903-04	4,14,35,164	627,109	141,132	360,039
1904-05	4,88,77,663	644,552	124,465	370,944
1905-06	4,92,24,115	565,720	129,263	313,810
1906-07	4,91,69,859	654,187	144,253	361,715
1907-08	4,89,26,993	630,829	140,431	341,122
1908-09	5,20,39,480	901,498	144,003	327,388
1909-10	4,98,08,421	916,057	140,412	274,685

In answer to Part (b) of his question.

Years.	MILITARY WORKS.		SPECIAL SERVICES.	
	Indian.	Home.	Indian.	Home.
	Rs.	£	Rs.	£
1885-86	96,04,150	6,469	...	...
1890-91	1,19,01,170	23,033	25,23,980	180,470
1895-96	1,15,14,780	30,947	2,17,160	45,252
1900-01	1,11,28,272	41,057	...	6,864
1901-02	1,39,52,561	34,612	...	...
1902-03	1,55,10,922	62,607	...	...
1903-04	1,47,25,195	52,974	3,25,395	5,361
1904-05	1,39,79,372	49,641	5,88,613	92,387
1905-06	1,57,00,574	48,199	11,28,782	71,054
1906-07	1,60,28,916	58,921	14,11,302	44,271
1907-08	1,64,44,534	70,640	14,31,376	20,862
1908-09	1,88,94,414	41,067	2,55,230	12,029
1909-10	1,23,57,178	34,530	82,934	23,075

(In answer to Part (d) (i and ii) of his question.)

Years.	Home expenditure on Ordnance and Miscellaneous stores.	Indian expenditure under Grant 10— "Ordnance" (including cost of Ordnance establishments, manufactures, etc.)
	£	Rs.
1885-86	428,600	58,27,303
1890-91	720,814	71,59,842
1895-96	235,850	84,69,351
1900-01	673,009	71,02,726
1901-02	1,147,238	96,46,625
1902-03	1,015,005	1,12,99,554
1903-04	795,670	1,09,25,486
1904-05	1,142,545	1,17,88,401
1905-06	433,277	1,26,01,944
1906-07	1,264,531	1,30,25,660
1907-08		1,32,01,731
1907-08	338,368	1,26,90,053
1908-09	310,873	1,17,89,944
1909-10	249,225	1,01,58,145

Old classification.

New classification.

(In answer to Part (e) of his question.)

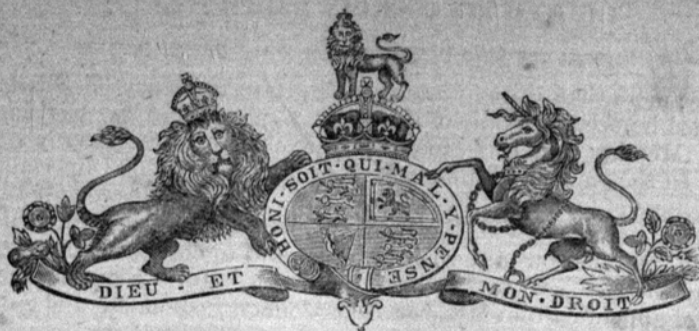
Years.	NON-EFFECTIVE CHARGES.	
	Indian.	Home.
	Rs.	£
1885-86	83,27,985	1,693,311
1890-91	96,21,655	2,095,632
1895-96	89,71,353	2,316,527
1900-01	91,03,829	2,384,918
1901-02	93,27,144	2,350,799
1902-03	98,37,015	2,363,799
1903-04	1,00,92,048	2,392,635
1904-05	1,00,80,632	2,437,352
1905-06	1,02,95,803	2,334,788
1906-07	1,01,16,965	2,425,840
1907-08	98,91,248	2,450,613
1908-09	1,01,51,545	2,469,394
1909-10	1,02,58,085	2,463,108

N. B.—These figures include charges for civilian service and are counterbalanced by receipts to a certain extent.

APPENDIX C.

Statement showing the number of places annually recruited in each Province for the executive branch of the Provincial Civil Service and in what proportion they are so recruited—how many by promotion and how many by selection.

Province.	Recruitment by promotion.	Recruitment by selection.	Total annual recruitment.	REMARKS.
Madras . . .	5.5 (a)	6 (a)	6.1 (a)	(a) Average for ten years.
Bombay . . .	4 (b)	3 (b)	7 (b)	(b) No fixed rate prescribed: average for three years.
Bengal . . .	9	10	19	
United Provinces .	10 and 9 in alternate years.	9 and 10 in alternate years.	19	
Punjab . . .	10.6 (c)	3 (c)	13.6 (c)	(c) Average for seven years for both executive and judicial branches of the service for which joint recruitment is made.
Burma . . .	13 (d)	2 (d)	15 (d)	(d) Average for ten years.
Eastern Bengal and Assam.	2	6	8	
Central Provinces .	3.6 (e)	1.4 (e)	5 (e)	(e) Average for four years.
North-West Frontier Province.	81.8 per cent.	18.2 per cent.	No fixed number.	
Baluchistan . . .	1.1 (f)	Nil (f)	No fixed number.	(f) Average for five years.



The Gazette of India.

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CALCUTTA, SATURDAY, MARCH 2, 1912.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 TO
1909 (24 & 25 VICT., c. 67, 55 & 56 VICT., c. 14, AND 9 EDW. VII, c. 4).

The Council met at Government House, Calcutta, on Friday, the 23rd
February 1912.

PRESENT :

His Excellency BARON HARDINGE OF PENSHURST, P.C., G.C.B., G.C.M.G., G.C.V.O.,
G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*,
and 58 Members, of whom 51 were Additional Members.

OATH OF OFFICE.

The Hon'ble Mr. Wheeler made the prescribed oath of allegiance to the
Crown.

DEATH OF SIR JOHN JENKINS.

His Excellency the President : "Since the last occasion on which the Council met in this place, and while the hearts of all were still beating with the joy and enthusiasm created by the visit of Their Imperial Majesties to Calcutta, a sudden reminder reached us of the inexorable character of the laws of nature, and death unexpectedly deprived India and the Government of India of one of their most valued and trusted servants. It was only two days before Their Imperial Majesties left Calcutta for Bombay that Sir John Jenkins was present at the meeting of my Executive Council, apparently in the best of health, and yet a week later he had breathed his last. There are probably many here who knew Sir John Jenkins much longer than I knew him; some who even knew him better. But all I can say is that no one possibly liked and respected him more than I did. Combined with a magnificent brain and a forceful character, he had great kindness and sympathy of heart—qualities which endeared him to all those who knew and understood him. Petty jealousy and meanness had no place in his character, and it might be said of him, as was written by Pope of an eminent English statesman :—"

'Statesman, yet friend to truth of soul sincere,
In action faithful and in honour clear;
Who broke no promise and served no private end.'

"After more than thirty years spent in the Presidency of Bombay, during which period he occupied some of the highest posts held by Civilians, he was appointed Member for the Home Department of the Viceroy's Executive Council. In that capacity I am able to bear testimony to his Imperial patriotism, to his high sense of loyalty to his colleagues and friends, to his conciliatory attitude in all matters connected with the Home Department, his invariable desire to set wrong right, and his constant wish to forget and to obliterate the memory of all that during the last few years is best forgotten. Quite recently the Secretary of State had appointed him Member of his Council in London, and great as I felt his loss would be to me and to the Government of India, I gladly welcomed the appointment of Sir John Jenkins to London, as I fully realized that in the ever-changing conditions of this great Empire his presence and advice would always be in harmony with the legitimate sentiments and aspirations of the people of India. Just as his prospects of happiness and usefulness to India and to England were brightest, death has claimed him, and although it is not for any of us to question the will of Providence, we may, with reason, give expression to our profound regret at the loss we have all sustained. To me personally he was a most loyal and devoted colleague and friend, whose experience and knowledge of India and her people were as extensive as they were priceless. To India, in my opinion, his loss is irreparable. To Lady Jenkins and her family we all, I am sure, pour out our deep and heartfelt sympathy in their bereavement. May she find comfort and consolation in her sore distress, and may the soul of our late colleague and friend rest in peace."

BERAR REVENUES.

The Hon'ble Sir Guy Fleetwood Wilson laid on the table a statement* showing by Major Heads the Provincial share of Revenue earned in Berar for the years 1904-05 to 1909-10, which was promised in his reply given to the question put by the Hon'ble Rao Bahadur R. N. Mudholkar at the meeting of the Legislative Council held on the 18th September 1911.

QUESTIONS AND ANSWERS.

The Hon'ble Babu Bhupendranath Basu asked :—

"Will the Government be pleased to state—

- (1) The number of appointments in British India in the Indian Educational Service.
- (2) How many of these are held by Europeans and how many by Indians?
- (3) How many appointments of Europeans have been altogether made in this service since its creation in the year 1896 and how many of Indians?
- (4) How many officers serving in the Provincial Educational Service have been promoted to the Indian Educational Service since the year 1897?"

The Hon'ble Sir Harcourt Butler replied :—

- "(1) The number of appointments is 211.
- (2) The number of Europeans is 208 and the number of Indians is 3.
- (3) The number of Europeans appointed since 1896 is 210 and the number of Indians appointed since 1896 is 2.
- (4) Since 1897 only two members of the Provincial Educational Service have been promoted to the Indian Educational Service."

* Vide Appendix No. 1.

The Hon'ble Babu Bhupendranath Basu : " As regards the two members promoted, may I ask which of them are Indians and which Europeans ? "

The Hon'ble Sir Harcourt Butler : " Both were Europeans. "

The Hon'ble Babu Bhupendranath Basu asked :—

" Has the attention of Government been drawn to the report of the proceedings of a meeting of the District Board of Dacca appearing in the *Dacca Herald* of the 15th January 1912, regarding the presentation of an address of welcome to His Excellency the Viceroy on his visit to Dacca ?

" Is it true that the Civil Surgeon observed at the meeting that the Royal boons were not to be regarded as boons but as a controversial matter, and further that as His Majesty did not go to Dacca there ought not to be any mention of his visit in the address to His Excellency ?

" Does the Government intend to take any notice of the incident ? "

The Hon'ble Sir Reginald Craddock replied :—

" The Government of India have seen the report in the *Dacca Herald* to which reference is made, and have ascertained that it was not an accurate account of what occurred at the meeting, and that the Civil Surgeon did not use the words attributed to him.

" The Government of India do not intend to take any notice of the incident. "

The Hon'ble Babu Bhupendranath Basu asked :—

" (a) Has the attention of the Government of India been drawn to an article in the *Pioneer* referred to by Mr. Montagu in his speech in the House of Commons on 26th July 1911 ?

" (b) Will the Government be pleased to state what steps they have either taken or propose to take in the matter ? "

The Hon'ble Sir Reginald Craddock replied :—

" The Hon'ble Member is apparently referring to a letter—not to an article—which appeared in the *Pioneer* of the 26th June 1911. The Government of India have seen the letter in question but do not intend to take any action in the matter. "

SUSPENSION OF RULE.

The Hon'ble Sir Guy Fleetwood Wilson asked His Excellency to suspend rule 10 of the rules for the discussion of matters of general public interest, in order to admit of the discussion of the Hon'ble Mr. Dadabhoy's Resolution before the legislative business.

The President declared the rule suspended.

INCOME-TAX.

The Hon'ble Mr. Dadabhoy : " My Lord, I beg to move that—

This Council recommends to the Governor General in Council that, in view of the present increased cost of living, the minimum of income assessable to the income-tax be raised to Rs. 1,500 a year.

" The Resolution contains my reason in brief for moving it. The cost of living has lately increased, and on that ground I appeal to Government

to raise the limit of exemption to Rs. 1,500 a year. To remove all doubts on the subject and to establish the necessity of the remission, I will further down enter more fully into the facts connected with the increase. I must also satisfy Hon'ble Members that the adoption of the Resolution will not seriously affect the financial position of Government.

"The income-tax, though not favoured in many countries in Europe and America, has been familiar in India, for, with temporary spells of suspension, it has been in existence in one form or another for half-a-century. The extraordinary strain consequent upon the Mutiny and the assumption of direct government by the Crown accentuated the financial necessity of Government which disturbed its financial operations for a series of years, while the commercial and industrial activity following in the wake of the transfer of the administration with the resultant accession of income pointed to the source from which to raise the additional revenue necessary to put the finances in order. Thus it was that in 1860 the first income-tax was imposed, to be abolished a few years later by Sir Charles Trevelyan. After only one year of surplus following the repeal, the Right Hon'ble Mr. Massey revived the tax as a license-tax in 1867, and converted this into a certificate-tax in 1868. In 1869 necessity forced the hands of Sir Richard Temple, and a general income-tax was imposed which was repealed early in the seventies. Then, in 1886, the tax was revived, and, with a slight modification in the limit of exemption in 1903, it has been in existence ever since. There are two outstanding facts in this history—that during the first years the tax was unpopular, and there was a tendency to tamper with it on every occasion of temporary prosperity; and, further, that it has now received the sanction of time and has become a permanent feature of our fiscal arrangement. But it behoves us to make it as equitable in its operation as possible. The Resolution before the Council has been brought forward with the object of making the tax more equitable in one direction. The exemption is founded upon the just principle that the amount required for the necessities of life should not be taxed. This amount must necessarily be a changing quantity. It varies with the cost of living, and any increase in that cost must *per se* be ground for greater liberality in this matter of exemption.

"My Lord, the assessable minimum of Rs. 500 was fixed so far back as 1869. It may have been sufficient and equitable at that time. But a few decades after it became apparent that that minimum would have to be raised for 'the relief of.....the struggling members of the middle class,' and the state of the finance in 1903 enabled Lord Curzon to remit the tax upon all incomes below Rs. 1,000. I do not think Government at that time was convinced that the highest limit of exemption was reached. The circumstances point to a different conclusion. In 1904, Lord Curzon referred to the remission of taxation allowed the previous year in terms which warrant the inference that Government contemplated a still larger remission in the income-tax also:

'Last year we gave to India the first remission of taxation she had enjoyed for twenty years. We sacrificed thereby about £1,400,000 annually in respect of the salt-tax and the income-tax; but we gave to the people what in my judgment was their due, and we so arranged our remissions as to bring relief as far as possible to those classes that best deserved it. If our resources continue to expand, I should like to look forward to a day when we may proceed even further.'

"But, my Lord, I do not seek to justify the Resolution by any promise of Government. I take my stand upon a higher ground. I submit that the justice of the case demands that a higher limit of exemption should be fixed. 'The struggling members of the middle class' for whom Lord Curzon's Government evinced such concern deserve sympathetic treatment, and since 1903 the cost of living has increased to such an extent that a reconsideration of the limit of exemption would be an act of bare justice. On September 15th last the *Statesman* observed:

'In India.....the tax (income-tax) remains to this day in the crudest and least scientific form of which it is capable. Here, it is essentially a poor man's tax.'

"For the purposes of the Resolution an elaborate discussion of the features of the Indian tax, which distinguish it from the English income-tax and

make it less equitable is not needed, although later on I shall have to mention some of them. The points now before the Council are, whether, apart from controversial questions, the cost of living has increased since 1903, and whether the increase justifies a further remission?

"Now, my Lord, it is a notorious fact that prices had shewn an upward tendency since 1903 until they reached a point in 1907 and 1908 which forced the attention of Government by its seriousness. In reply to a question in Council in 1908 by my friend the Hon'ble Sir Gangadhar Chitnavis, Government stated that the subject of high prices was under consideration. In 1909, the Hon'ble Finance Minister, in reply to my question on the subject, said:

'The Government fully recognise the high importance of the rise in prices, and it is engaging the most careful attention.'

"In 1910 I followed up the matter, and Government, although not appointing the desired Commission of Inquiry, deputed a high officer to collect facts relating to the abnormal rise in prices. The investigation is now being made. But the information so far available is sufficient to establish the existence and the permanent nature of the rise and the consequential distress to men of modest means.

"In the Parliamentary Blue Book on the *Moral and Material Progress and Condition of India during 1909-10* it is pointed out:

'The rise in the prices of commodities in India during recent years has been the subject of much discussion Where wage rates are more or less customary, or where incomes are more or less fixed as in the case of pensioners, public and private employes, and the professional classes, the increased cost of living is a serious matter.'

"This rise is all-round, and almost every commodity is dearer to-day than it was a few years back. The following extract from the official table of prices of 11 articles imported, 28 articles consumed in India or exported, and food-grains proves the gravity of the situation:

Year.	Index Number of articles imported.	Index Number for articles consumed or exported.	Index Number for food-grain (retail prices).
1873	100	100	100
1903	88	103	126
1904	93	104	117
1905	96	116	147
1906	105	139	179
1907	116	145	180
1908	107	151	231
1909	99	134	195

"The alarming feature of the variations shewn here is that, while the appreciation in values is general, the rise in the prices of food-grains is the heaviest, the scale in 1909 being nearly 55 per cent. higher than that of 1903. And this notwithstanding the decline in 1909, caused by meteorological and agricultural conditions which can only be regarded as exceptional, as will appear from the following official account in *Prices and Wages in India, 1911*:

'The wheat crop of 1909 shewed an advance on the previous year.....The monsoon was exceptionally favourable, and there was a considerable increase in the total outturn of the staple crops. There was a phenomenal rice crop in Burma and the two Bengals, the extended cultivation in the latter having been stimulated by low prices of jute. As a result there was a general decline in prices in 1909. The timely and well-distributed winter rains brought fine crops to harvest in the spring of 1910. The monsoon of that year was on the whole favourable and the crops good. Prices continued to fall; but in the case of rice a strong demand from China operated to keep the rates at the level of the previous year, particularly in Burma.'

"Whatever the explanation, the broad fact remains that the level of prices, especially of food-grains, in 1910 was much higher than that of 1903. In 1911 there was not much of an improvement in the situation, slight local variations not being taken into account. An examination of the history of prices in India since 1861 reveals the facts that, through one cause or another, there has been a steady enhancement, and that high prices are more or less a normal feature of modern conditions. In *Prices and Wages in India* (1911) the observations about the rise in prices during the quinquenniums 1886-90 and 1891-95 are instructive :

'It is difficult to find adequate reasons for the great rise in prices which took place during these five years, for the 1889 famine in Ganjam (accompanied by distress in Orissa and scarcity in Bihar) was only of local importance and prices had already reached their highest point in 1888. The export trade in food-grains was not larger than the preceding quinquennium.

'The high prices ruling during 1886-90 were still further raised in 1891-92 by prolonged drought, causing scarcity and distress in Madras, Bombay, the Dekkhan, Behar and Upper Burma. A strong Indian demand for rice was coupled with large exports, and at the same time there was an unprecedented exportation of wheat owing to the failure of crops in Europe, so that Indian prices rose almost to famine levels. With better seasons prices fell, but the lowest point reached in 1891-95 was still above the average level of the previous quinquennium.'

"The italics are mine. The facts noted during the decade indicate the line which prices usually follow, at least in India. They elude scientific calculations, and when once there is abnormal inflation, the lowest point reached at the subsequent subsidence is generally higher than the average preceding the rise. Increased facilities both within the country and without prevent any appreciable decline, and there is a strong tendency towards equalisation in values all the world over. The figures of the years 1903-1909 shew that the rise was not spasmodic, but was steady, and indications are not absent that prices will swing round the high level of 1909. At least the hope of a reversion to the level of 1903, high though it was, has not any sound basis in the facts disclosed by the history of the past fifty years. The Government of India, while admitting the rise in prices, is evidently unable to come to a definite conclusion about its permanent nature, and is waiting to be assured on the point by departmental investigation. But the belief that it is to some extent due to, what the Finance Minister describes as, 'world factors', should dispel any lurking suspicion that it is only temporary, and not permanent. 'World factors' do not exert their causal influence only for a period, and will not disappear from the Indian economic situation unless we are going to live in utter seclusion from the world, of which there is precious little chance. In at least one Government publication it is admitted that 'the rise must to some degree be permanent.' The following description of the economic conditions in *The Administration of Bengal under Sir Andrew Fraser, K.C.S.I.*, will be accepted by the public as correct in regard to the whole of India :

'This extraordinary rise in the prices of food-grains has not been confined to this Province and cannot be ascribed to any single cause. Prices have risen all over India ; and the rapidity of the rise has attracted attention in other Provinces as well as in Bengal. It is obvious that with the present facilities of intercommunication between all parts of the country, a general rise of prices in other Provinces must inevitably lead to a corresponding rise in the Province Modern conditions, in fact, tend more and more to form a world-wide market . . . to expose the grain markets of this country to international influence ; and this phase of the economic development of the country has no doubt largely contributed to a general rise in the prices of food-grains. These considerations, moreover, seem to lead to the conclusion that the rise must to some degree be permanent.'

"My Lord, whether this rise in prices is partially beneficial to the agriculturist or not, is another matter ; but that it has increased the cost of living admits of little doubt. It is no comfort to the poorer middle classes even if it is proved that wages have also increased in the same proportion ; but the extent of the increase is not free from doubt. The statistics so far published have not, according to the note in the Blue Book, been collected either with care or scientific accuracy and discrimination. They provide therefore an insecure basis for generalisation. In 1911 only a regular wage census was undertaken, but the results are not before the public yet. Reports from all the Provincial Governments have not reached the Government of India.

But the assumption that wages have increased proportionately will add force to the case of the poorer middle classes. Wage-earning classes do not pay the income-tax; any amelioration in their condition leaves the question of the limit of exemption unaffected. The fact that wages of domestic labour have increased simultaneously with the recent enhancement in prices only adds to the difficulties of the humble *bhadralog*, whether in receipt of a lean annuity, a modest pay or pension, or a precarious income from trade or profession. The two causes combined make the cost of living far more burdensome in his case. And it is for the relief of this class of men that I plead for the limit of exemption to be raised to Rs. 1,500. It cannot be that the purchasing power of the rupee having gone down considerably, even a small tax on incomes ranging from Rs. 1,000 to Rs. 1,500 is not felt by the country. My information is that it *is* felt by the assesses. The contrary supposition is opposed to human probabilities. The truth is, if the grievance is not so articulate, it is none the less real.

"My Lord, the Indian income-tax is assessed upon principles different to those underlying the tax in the United Kingdom and Germany, and makes it more onerous to the respectable poor. In the former country, not only is a certain income exempted from assessment, but abatement according to the scheduled rates is allowed from even larger incomes, on the principle laid down with scientific precision by Mill:

'that incomes above the limit should be taxed only in proportion to the surplus by which they exceed the limit.'

"£160 being the limit of exemption in England, abatement of £160, £150, £120 and £70 is allowed from incomes of £160—£400, £400—£500, £500—£600 and £600—£700, respectively. In case of joint income of husband and wife below £500, the wife can claim exemption for her income from her separate business; in case of incomes under £500, an abatement of £10 is allowed for each child under 16 years old. In the Federal State of Prussia too, according to *Diplomatic and Consular Report No. 4626 of 1911*, deductions are allowed for dependants and children from all incomes below 6,500 marks or Rs. 4,875, one mark being equal to 1s. or as. 12. Such abatements are foreign to the Indian procedure. The rates, again, are fixed on more equitable principles in England. Distinction is made between 'earned' and 'unearned' incomes. Prussia maintains an elaborate table of graduated rates upon incomes ranging from 900 marks to 10,500 marks or from Rs. 675 to Rs. 7,875. In the assessment of incomes under 12,500 marks or Rs. 9,375,

'there is . . . a proviso that . . . consideration may be taken for any special circumstances which may have an unfavourable effect on the tax-paying capacity of the person to be assessed.'

"Austria-Hungary and Japan follow the Prussian method of assessing incomes on a graduated scale of rates. In Japan the rates also vary according to the nature of the assessable income, three different schedules being maintained.

"My Lord, I mention these facts with the object of inviting the attention of Government to some of the harsh features of the Indian tax, and of impressing upon Hon'ble Members the desirability of making its administration less oppressive to the bulk of the people. The suggested larger exemption will at least afford relief in one way. Should appeal to precedent be necessary, the English practice will provide an inspiring example. The limit of exemption in England is, as pointed out above, £160 or Rs. 2,400 a year. In Prussia the assessable minimum is nominally 900 marks or Rs. 675, but, by reason of the deductions allowed and the concessions in assessment made in special circumstances, in practice it works out to a much higher figure. Moreover the tax upon incomes below Rs. 1,011 (1,350 marks) is very light. For an income of 2,100 marks or Rs. 1,575 the Prussian tax is 31s. or Rs. 23-4-0, whereas the Indian tax is Rs. 35. The exemption under the Indian Income-tax Act of 1903, it is true, is apparently more liberal than that of Prussia, but the different conditions make a fair comparison impossible.

"My Lord, the acceptance by Government of the suggestion contained in the Resolution will involve a loss of about 30 lakhs of rupees in annual

revenue, 29½ lakhs being the amount of total collection in 1909-1910 upon 'incomes exceeding Rs. 1,000 but less than Rs. 1,500.' Making allowance for normal expansion in the revenue, 30 lakhs of rupees would approximately represent the highest revenue collection from this source. The adoption of the Resolution would necessitate the surrender of this annual income. Now the question is, can the loss be faced at present without detriment to public interests? There are insistent calls upon the Exchequer for more adequate provision for primary education and the improvement of sanitation which must be met. The extinction of a productive source of revenue in the abandonment of the cultivation of, and trade in, opium also looms ahead. The question therefore arises, can the suggestion be received with equanimity, or even be reasonably made?

"My Lord, I yield to none in my enthusiasm for mass education and sanitary improvement, and I would be sorry if the grants on these heads are not liberal and expansive. But my enthusiasm in the cause of education and sanitation does neither blind me to the other needs of the country, nor prevent me from advocating the cause of a deserving class of our fellow-subjects. If justice demands that relief should be given to the middle class by the remission of a tax, be it ever so small, I would certainly request Government to afford it. That the remission for which I now move Government is necessary to meet the justice of the case, the statements of facts made, and the arguments advanced, above will have made clear to the Hon'ble Members. That the tax upon small incomes is not inconsiderable, will also have appeared to the Council in the light of the practices of other countries. Apart therefore from the financial results of the measure I recommend, on its merits, it deserves sympathetic consideration at the hands of Government. I have also a lively faith that the raising of the limit of exemption will not seriously disturb the estimates of Government. This year the public revenue has far outstepped our calculations. The Railways alone have yielded us a large income. The opium revenue also is better by two crores of rupees. The net result of the year's operations, it may be confidently predicted, will be that, notwithstanding extraordinary expenditure, the annual budget will shew a large surplus. And the retrenchments in expenditure which the Hon'ble Sir Guy Fleetwood Wilson has so thoughtfully and courageously enforced, and for which the country is so deeply grateful to him, ensure to the public finances a permanent relief. Efforts are being made even to maintain the Army more economically. The proposed alterations in the organisation and administration of the troops, both British and Indian, which will shortly be scrutinised by a Commission presided over by Field-Marshal Sir W. G. Nicholson, are expected to effect large economies of a permanent nature. Surely, in view of this actual and prospective conservation of resources, the remission of tax suggested is not of so appalling a character as to disable Government and to necessitate a proportionate curtailment of its grants for education and sanitation. It is also by no means certain that the retention of the income-tax upon incomes exceeding Rs. 1,000 but less than Rs. 1,500 a year will increase those grants. The revenue will not be earmarked for the support of education and the improvement of sanitation. Our anxiety for education and sanitation need not therefore interfere with our votes on the Resolution now before the Hon'ble Members. The fall in the revenue, consequent upon the remission, may not after all be so much as 30 lakhs of rupees. Normal expansion in the revenue from the income-tax must, in the ordinary course, to some extent at least, recoup the loss. In the assessment of the income-tax the procedure now is different in different Provinces; the practice is not uniform. On 10th February 1910, the Hon'ble Finance Minister admitted in his reply to my question on the subject that the rules were framed by Provincial Governments. Although they may be assumed to follow 'the same lines,' there must be some diversity as to details. The Hon'ble Sir Sassoon David, by his questions of the 20th and 27th March 1911, drew Government's attention to the existing disparity in the percentages allowed in different Provinces for depreciation in machinery and buildings, as also in the method of estimating the capital cost. The adoption of a uniform method, it is hoped, will result in an accession of revenue. The Mahajana Sabha of Madras has also pointed out the absence of uniform rules for the assessment of the profits of insurance companies. Some doubt hangs about

these profits in the absence of a clear definition. The conclusion that the scope for improvement in the administration of the tax, with a corresponding increase in revenue, is limited, is not justified by these circumstances. But if all these considerations are to be put aside and some compensation must be found, in my humble opinion, the rate of the tax should be raised by one pie per rupee upon incomes of Rs. 30,000 a year and upwards. Through the courtesy of my friend the Hon'ble Sir James Meston, whose well-merited elevation is a source of sincere joy to all of us here, but the withdrawal of whose genial and inspiring presence from the Council will leave a void which it will be difficult to fill, I find the revenue at present collected upon such incomes is, at 5 pies per rupee, 50½ lakhs of rupees. An additional pie in the rate will yield an additional revenue of over 10 lakhs of rupees a year. With increased industrial and commercial activity in the country, this loading will prove far more productive in the future. Sound economic principles and the examples of progressive countries will sanction the extra taxation of large incomes for the relief of small ones. If it appears so desirable, to avoid putting extra pressure upon individuals, the rate of 6 pies per rupee may be charged upon incomes of Rs. 50,000 a year, instead of Rs. 30,000 a year, and upwards. In 1909-10, the total income from the tax upon such incomes at the existing rate was 41 lakhs of rupees. Without taking into account normal growth, the extra pie will yield something over 8 lakhs of rupees. And these large incomes of Rs. 50,000 and upwards are mostly profits of companies. Individuals will not be burdened with the extra pie. With his ingenuity and superior knowledge, the Hon'ble Finance Minister may be able to devise other and more satisfactory means of recoupment if it is thought imperatively necessary. But howsoever the loss is made up, let justice be done and relief be afforded to the struggling middle classes whose lot, my Lord, is harder to-day than it was in 1903."

The Hon'ble Sir Gangadhar Chitnavis: "My Lord, it is a fundamental principle of direct taxation that the amount required for the necessities of life should be exempt. In fixing this amount in India, the initial mistake has been not to make any allowance for dependants and children. The authorities have likewise been misled by the appearance of inexpensiveness of the simple way of life of the average Indian. But with civilisation, the proverbial simplicity is fast disappearing, the luxuries of the preceding generations are becoming the necessities of the present, fresh wants are following in the wake of imported ideas. It is time this fact, broad and patent, should be recognised in the administration of the income-tax. Government should also note that allowances for dependants and children are even more necessary in India than in England where they are made. In England a man lives for his wife and children, whereas in India the joint family system imposes upon the Hindu a heavy responsibility for the support of agnate and cognate relations in addition to the duty of maintaining his wife and children according to his position in life. Neighbourhood and example have impregnated the Muhammadans with similar notions of communal existence. The net result is, that in India for one earning member of society there are numerous others who are dependent upon him for sustenance. Early marriage is another contributory and potent cause of encumbrance. Two other facts accentuate the evil of high prices and wages in the case of the humble clerk, the pensioner, and the average trader and professional men. Religious injunction makes it imperative for the Hindu and the Muhammadan to perform certain religious and social ceremonies, which are costly. However opposed they may be to the canons of political economy, Indians cannot avoid them. Their private charity is inculcated by the religions of both the great communities to a degree not in accord with Western notions of communal duty. In assessing the cost of living for purposes of the Income-tax Act, regard must therefore be had to all these circumstances, and if due allowance for each is made, the limit of exemption would automatically expand. Since this is not made in individual cases and is not practicable, according to my conceptions of Government duty, the taxable minimum should be generally raised to Rs. 1,500. Roughly speaking, there has been an increase of 50 per cent. in the cost of living since 1903.

"My Lord, the remission advocated will be a wise act of statesmanship. I have said before, and I repeat it to-day, that altered economic conditions have created some amount of unrest in the country, and this unrest, from the nature of the case, will outlive the beneficent political results of the Royal Visit. The unrest might be made infinitely more harmful by the insidious manipulations of the educated poor. It is desirable, nay necessary, that this class of men should not be discontented, and should be won over to the side of Government by sympathy and grace. The remission will affect this class most, and although not much by itself to alleviate the misery of small means, will demonstrate to them the sympathetic concern which Government feels for them. And this conviction will be one more link in the chain of gratitude which binds them to British rule.

"My Lord, I do not think the loss of revenue involved presents a serious obstacle. It is not a large sum, after all, and I have too much faith in the elasticity of the income-tax as a source of revenue to apprehend any enforced curtailment of our programme of enlightened expenditure in consequence of the loss."

The Hon'ble Mr. Subba Rao : "My Lord, the speech delivered by the Hon'ble Mr. Dadabhoi raises important questions as to the lines on which the incidence of the income-tax may be modified. But fortunately we are not called upon to consider this large and intricate question. The present proposal is simply to raise the minimum of assessable income from Rs. 1,000 to Rs. 1,500, and as pointed out by the Hon'ble Mover, it involves a surrender of nearly 30 lakhs of our revenue. I fully appreciate the solicitude of the Hon'ble Member to give relief to those whose incomes are between Rs. 1,000 and Rs. 1,500. But I regret I am unable to give my support to the Resolution moved by the Hon'ble Member.

"In the first place, it appears to me that the Resolution is most inopportune in the present financial circumstances of the country. Money is most urgently needed in so many directions—for the extension of education, general and technical, sanitation and various other important matters. The Hon'ble the Finance Minister finds that he is confronted with the near extinction of the opium-revenue. He is unable to meet the growing demands made on him, notwithstanding the economies which he is earnestly trying to enforce on all sides. In these circumstances it is not right, in my opinion, that we should forego nearly 30 lakhs of rupees of our revenue.

"In the second place, there is no complaint heard that the tax on incomes between Rs. 1,000 and Rs. 1,500 inflicts any great hardship. We have numerous District and Provincial Conferences held annually in different parts of the country. We have the annual session of the Indian National Congress bringing to the notice of the Government the wants and grievances of the people. There is the All-India Moslem League speaking for the Muhammadans in this country. Has any of these bodies during these several years raised its voice on behalf of the class of people for whom the Hon'ble Member shows so much solicitude? Has any of them formulated any grievance with respect to them? After the income-tax was passed in 1886 the Indian National Congress from 1887 onwards was urging strongly upon the Government that the taxable minimum should be raised to Rs. 1,000, on the ground that 'the administration of income-tax, especially as regards incomes below Rs. 1,000, has proved extremely unsatisfactory.' This grievance was urged all over the country at District Conferences, Provincial Conferences, etc. It was nearly sixteen years before the Government could see their way to grant the prayer, and that only when the Treasury was overflowing with surpluses. And when the minimum was raised to Rs. 1,000 with effect from the 1st of April 1903, the Indian National Congress on behalf of the people expressed its thanks to the Government for thus affording the necessary relief.

"I may point out one peculiarity in this connection. When the minimum was raised to Rs. 1,000, a considerable number of those who had been exempted, *i. e.*, those whose incomes were between Rs. 500 and Rs. 1,000,

had the honour of being promoted to the Rs. 1,000 class. From the statement* furnished to me by the courtesy of the Hon'ble Sir James Meston, we find that under Part IV, dealing with ordinary trade and professional incomes, which is the material portion bearing on the subject in hand, the average annual rate of increase under grade Rs. 1,000 to Rs. 1,250 for the three years preceding the raising of the minimum, *i.e.*, for 1900-01, 1901-02, 1902-03, was 1,045 in the number of assessees and Rs. 22,350 in the amount paid. But when we pass to the next two years after the minimum was raised, we find that the number of assessees increased suddenly in the first year by 12,423 and the amount paid by 2.78 lakhs, and in the second year by 16,593 and 3.39 lakhs as compared with 1902-03. Apparently owing to the loud complaints raised by the people, the figures for the succeeding years in the number of assessees and the amount paid have rather gone down, so that the number of assessees and the amount paid by them for 1909-10 were less than those for 1904-05. These figures demonstrate clearly how, when the minimum was raised, the benefit did not in an appreciable number of cases reach those for whom it was intended. Similarly, if the Hon'ble Member's proposal were accepted, one result would be that an appreciable number of those whose incomes are below Rs. 1,500 would find themselves placed in a higher class.

"If the present unsatisfactory way of administering the Act should continue, I hope some means will be found to improve the present state of things. I would like to advocate the abolition of the last grade of Rs. 1,000 to Rs. 1,250 and fix the minimum at Rs. 1,200 a year. This would effectuate the intention of the Government to really exempt those whose incomes are below Rs. 1,000. This may be done when the finances are in a condition to allow it.

"In the third place, there does not seem to be any strong grounds why those whose incomes are really between Rs. 1,000 and Rs. 1,500 should escape the tax. They are generally clerks, traders and other professional men forming part of the large middle class of the country. They do not in many cases contribute substantially to the exchequer except in the shape of the income-tax. It is pointed out by the Hon'ble Mover with great force and at great length, that prices have risen since the year 1903, justifying an increase in the minimum of assessable income. There is no doubt an upward movement in prices perceptible not only in India, but all over the world. We have to wait and see the true nature of this movement and how far it affects the ability of this class of people to pay the tax. It appears to me, that, after all, those who get Rs. 80 a month can without much inconvenience afford to contribute two rupees a month out of it to the revenues of the country.

"In this connexion, I may venture to state that the chief complaint with regard to the income-tax is not so much its incidence as the way in which it is administered. The people are entirely at the mercy of assessing officers. No opportunity is given when the tax is imposed, and the way in which appeals are disposed of is highly unsatisfactory and irritating. This is a favourite theme, dilated upon at District and Provincial Conferences, and I hope that the Government will find a remedy for this. We ask that a non-official agency, something like the Panchayat, should be associated with the assessing officer both at the time of the imposition of the tax and in the disposal of appeals. I believe that the proposal of the Hon'ble Mr. Gokhale to associate District Officers with Advisory Councils will go a great way to mitigate the hardship now felt in the administration of the Act."

The Hon'ble Mr. Muhammad Shafi.—"My Lord, with all possible good-will for the class of my countrymen whom the Hon'ble Mr. Dadabhoy would absolve from liability to contribute directly towards the maintenance of the Indian Administration, I regret I am unable to give my support to the Resolution so ably moved by my Hon'ble friend. I am unable to support his Resolution not only because with the increasing needs of the country involving heavy expenditure on the part of the State, the Indian Exchequer can ill-afford the loss resulting from the proposed remission, but also because, should the Government be in a position to grant relief by remission of

*Vide appendix No. 2.

taxation, there are classes which stand in more immediate and urgent need of such relief than the one whose cause my Hon'ble friend has advocated to-day.

" My Lord, barely nine years ago successive prosperity budgets enabled the Government to raise the taxable minimum limit of income from Rs. 500 to Rs. 1,000 per annum. That beneficent measure brought relief to multitudes of the lower middle class on whom the increased cost of living due to changed conditions did press more or less heavily and, in consequence, gave deep satisfaction. And though the conditions under which we live have, since then, changed to a certain extent so as to make the cost of living slightly higher, more particularly in the larger towns, nevertheless there has been no general demand for the further relief which is recommended in this Resolution. Several sittings of the National Congress have been held since then: the All-India Muslim League, founded in 1906, has met on various occasions. But neither of these representative bodies has raised its voice in asking for further relief to this class of tax-payers. And apart from the silence of these two influential organizations, even the most careful observation fails to reveal the existence of any real demand for the reform in taxation advocated by my Hon'ble friend.

" My Lord, the reasons for this absence of a general demand are not far to seek. The melancholy picture presented by the Hon'ble Mr. Dadabhoi of those whom he seeks to benefit in this Resolution is, I venture to submit, somewhat overdrawn. Whatever the measure of the rise in the cost of living during the last nine years, it is not those of our countrymen whose income ranges from Rs. 1,000 to Rs. 1,500 a year who have been, comparatively speaking, really hard hit by this increase. It is the great multitude belonging to the lower strata of the middle class including those who were exempted from payment of income-tax in 1903 upon whom the increased burden has mainly fallen, as also upon the still wider agricultural circle whose voice, I cannot help thinking, seldom reaches this Council Chamber, and whose stalwart shoulders have become accustomed to the heavy load they have learnt to bear with patience and resignation.

" During the Budget Debate of 1903, the Hon'ble Mr. Gokhale rightly observed that the proceeds of the Assessed Taxes were the only receipts which came exclusively from the middle and upper classes of the people. He was of course referring to those whose sources of income are, in the main, other than agricultural. Now this, I venture to say, is the very class of the Indian peoples who have relatively derived the greatest benefit from the conditions of increasing peace and prosperity brought about by the British Government and yet, according to my Hon'ble friend, they ought to enjoy all the benefits resulting from the existing conditions without contributing their proper share of the heavy expenditure involved in their maintenance. A peasant proprietor having but an acre or two of agricultural land, yielding a wretched pittance hardly sufficient for keeping body and soul together, may have to contribute a large slice of his scanty income to the Government Treasury, nevertheless it is not he who stands in special need of any relief. It is the members of the non-agricultural middle class who earn from Rs. 83 to Rs. 125 a month, whose share in the upkeep of the administration is but a drop in the ocean and who can well afford to pay the small contribution levied from them in the shape of income-tax who, according to my Hon'ble friend, must be relieved first and foremost from even this slight burden. A careful enquiry into the sources of deposits in the Post Office Savings Banks would show that the major portion of these deposits represents the savings of the very class whom this Resolution seeks to benefit. It is our agricultural classes that form the most stable element in the Indian population: they constitute not only the backbone but the whole frame of the Indian army. Whenever the State is in a position to grant some relief in the form of reduction of the fiscal burden, it is the peasant proprietor and the poorer agriculturist whose claims ought, above all, to receive special consideration at the hands of Government.

"My Lord, one more reason for the absence of a general demand for the fiscal reform adumbrated in the Resolution under discussion deserves to be specially mentioned. I feel sure that a large section of my countrymen whom the Hon'ble Mr. Dadabhoy has in view themselves realise that the increasing needs of the country requiring heavy expenditure make the contemplated change undesirable. Only the other day, on the auspicious occasion of the Imperial Coronation Durbar at Delhi, the Government frankly recognised its paramount duty in the matter of a wider diffusion of education among the masses and announced, for the carrying out of that laudable intention, the handsome recurring grant of 50 lakhs a year over and above the ordinary educational expenditure. This munificent gift to the Indian peoples has sent a thrill of delight in the hearts of all sincere well-wishers of the country. The remarkable educational activity observable on all sides is one of those gratifying features of the existing situation which mark the turning of a new leaf in the history of India, and will prove a source of incalculable good to the country. The establishment of an increasing network of elementary schools throughout the length and breadth of the Indian continent and the gradual adoption, as the financial conditions of the country permit, of steps towards making elementary education ultimately free so as to bring it within easy reach of the masses, without resort to the inquisitorial and irritating methods adopted in certain quarters, constitute the foremost need of the time. And I cannot but express my deep satisfaction at the thought that the Government of India fully realise their obligations in regard to this great and urgent need of the people. The heavy and increasing expenditure necessarily involved in the faithful discharge of this high obligation when considered together with the prospective loss of the opium revenue must make it obvious that the remission of this contribution by the non-agricultural classes towards the upkeep of the Indian administration is, under these circumstances, an impossibility. A goodly share of the benefits arising from this increased expenditure on educational, sanitary and other public undertakings will be reaped by these very classes, and will in itself constitute a relief which they ought heartily to welcome in preference to exemption from payment, once a year, of a petty sum which they can well afford in return for the manifold blessings which they enjoy under a system of settled Government hitherto unknown in this country.

"With these few remarks, my Lord, I regret I am unable to give my support to this Resolution."

The Hon'ble Maharajadhiraja Bahadur of Burdwan : "My Lord, I am sorry my friend Mr. Dadabhoy has brought this Resolution just now. But apart from personal feelings regarding this Resolution, which in many respects is laudable, I cannot help thinking with my Hon'ble Colleague Mr. Subba Rao that it is most inopportune to bring it at the present juncture. We know perfectly well that at the present moment the mind of educated India is very much centred in the educational problems in this vast peninsula—not quite a continent as Mr. Shafi has said. But what I wish to point out in this connection is that we have not only got to consider the educational requirements in the immediate future, but also many other pressing needs including the vast outlay in building a worthy Imperial Delhi as well as the recurring expenses in connection with it hereafter. Also we have got to consider the Dacca University and many other things that will be cropping up in these inordinate times. For these reasons, my Lord, I think it would be advisable for Mr. Dadabhoy to withdraw his Resolution, and to bring it up when another state of affairs exists."

The Hon'ble Mr. Gokhale : "My Lord, I agree with my Hon'ble friends Mr. Subba Rao and the Maharaja of Burdwan that the Hon'ble Mr. Dadabhoy has not selected an exactly opportune moment for the discussion of this question. Not only are we on the eve of the extinction of our opium-revenue, but even taking the date on which this discussion comes up, we are now only within a week of the introduction of the next Financial Statement. I think it would have been much more convenient if the discussion had taken place at any rate

after the Financial Statement had been introduced, because then we should have known exactly how we were likely to stand next year. My Lord, a definite proposal for a remission of taxation can at any time be justified only on two grounds: first, that the condition of the finances of the country is so prosperous that some sort of remission is possible; and, secondly, that there is unquestionable hardship caused by a particular impost. Now as regards the first, *viz.*, the condition of our finances, I think its prosperity is a matter which is open to very serious doubt. Only the year before last, the Hon'ble Finance Minister imposed fresh taxes on the country, because, in his view of things, the revenue then raised was not sufficient for the requirements of the State. It is true that last year there was a surplus and possibly, owing to the extraordinary circumstances of the year that is about to close, there will be another surplus announced next month. But to determine if a margin of revenue over expenditure is available so as to remit taxation, we must take a larger view of our finances than what would be obtained if we confined our attention to one or two years only. Very probably in 1913, if the opium-revenue is really extinguished, our finances will pass through a very trying time. I do not think, therefore, that any proposal involving remission of taxation should be seriously considered by this Council until we know where we stand so far at least as our opium-revenue is concerned. But apart from that, there is expenditure, and large expenditure, required in various directions. There is the question of mass education, to which an Imperial grant of 50 lakhs a year has already been promised, and which, I hope, will grow more and more as year follows year. There is also the necessity of providing money for sanitation, and then I think one of the great needs of the country is that there should be larger grants-in-aid regularly made to Local Bodies to enable them to perform their work satisfactorily. I think, therefore, that even if it is found that a surplus of revenue exists over the expenditure of the country when the next Financial Statement is introduced, there are so many directions in which that surplus could be usefully spent, and remission of taxation is not the only form in which it can be employed to the advantage of the people. But I will put these considerations aside, and take up the other question, *viz.*, whether this impost causes an unquestionable hardship to the class for whom my Hon'ble friend Mr. Dadabhoy has spoken to-day. Now, my Lord, there is no doubt that, from one point of view, all imposts are burdensome. If every tax is to be discussed solely from the standpoint of those who pay it, I do not think that there will be any tax which will escape adverse criticism. But the State has to look at it from another standpoint. The State has to look at the whole scheme of taxation, first, from the standpoint of its own necessities, and, secondly, from the standpoint of the comparative ability of the different classes to pay their particular share of the total revenue raised from the community. Now, judged by this standard, I really do not think that the class for which my Hon'ble friend seeks a remission has any substantial grievance. It is true that our minimum taxable limit is Rs. 1,000 a year, whereas in England, as my friend has pointed out, it is £160. But we must take into account the different money values in the two countries—a point which Mr. Dadabhoy has ignored altogether. From that point of view, a man who earns a thousand rupees a year here is really better off than one who earns £160 in England. My Hon'ble friend's chief argument in favour of his motion is the rise in prices that has taken place since 1903. It is true that there has been a serious rise in prices in recent years, and that must hit hard every buyer of commodities. But have the necessities of the State diminished? If not, how can the burden of taxation be reduced merely because prices have risen? Again, if there is a real surplus, which can be devoted to a reduction of taxation, which class is most entitled to relief? These are the questions which have to be considered, but which my Hon'ble friend has not considered. He compares present prices with those of 1903. But he takes no account of the remissions of taxation which have been made since 1903, and from which the class for whom he has spoken has benefited along with other classes. Thus the salt-duty, which was two rupees a maund in 1903, has been reduced by two successive remissions to one rupee a maund, and this fact must be taken into account in making a comparison.

My friend has quoted an extract from Lord Curzon's speech, claiming that Lord Curzon promised to raise the minimum limit of the income-tax to a higher figure when the circumstances of the country permitted it. Now I was in the Council at that time, and I am quite sure that that was not the idea present to Lord Curzon's mind. What he had in his mind was that the salt-duty would be further reduced, and that promise has been liberally carried out by the Government by two further reductions.

"In judging of the comparative ability of different classes to pay, the point to be really considered is whether the scheme of taxation, taken as a whole, hits any one class harder than any other class. Now from that standpoint I have no hesitation in saying—and I have urged this view again and again in this Council—that the poorer classes of this country bear really a larger burden than the class to which my Hon'ble friend has referred or the classes above them. The upper and the middle classes of the country contribute really much less to the Exchequer than our poorer classes relatively to their resources. We have only to glance at the various heads of our principal revenue to see that this is absolutely correct. Our revenue is mainly derived from land, salt, excise, (opium I will leave out, as the opium-revenue is contributed by the foreign consumer), customs, stamps, registration, assessed taxes, forests and provincial rates. Now the land-revenue—in raiyatwari tracts at any rate—is largely contributed by very poor people. It is an open question whether this revenue is rent or tax. My own view is that it is partly rent and partly tax. And to the extent to which it is a tax, its burden in raiyatwari tracts falls on very poor people. Then take salt. The burden of salt-revenue falls the heaviest on very poor people. Of course every class consumes salt, but the bulk of it is consumed by the masses of the people. It is the same thing with excise-revenue; the bulk of the excise-revenue comes from the pockets of very poor people. The class for whom my friend has spoken does not use country liquors and therefore it pays nothing to the State under the head of excise. Then under stamps and registration, the poorer classes contribute, relatively speaking, much more than the class whose annual income is between one thousand and fifteen hundred rupees. Under customs, too, the poorer classes bear their share of the burden, though here probably the classes above them contribute more. Under forests, they have to pay for their fuel and the grazing of their cattle. It is only the income-tax from which they are free, but taking the whole scheme of taxation, I maintain that their share of the burden is relatively much heavier than that of the middle and upper classes. No clear case, therefore, has been made out for giving special relief just now to the class mentioned by Mr. Dadabhoy. There are, however, one or two suggestions which have come from my Hon'ble friend with which I am in agreement. I think that while the minimum taxable limit might be kept at Rs. 1,000, the principle of abatement should be introduced into this country. It is a just principle and is found in operation in many civilized countries; and I think it is only just that there should be some abatement granted to those who are just above the minimum limit. I think those whose incomes are between Rs. 1,000 and Rs. 1,500 or Rs. 1,000 to Rs. 2,000, should have some reduction made as regards the amount on which the tax is assessed. Then I also agree that in the case of joint stock companies or those who have an income of Rs. 50,000 a year, there might be a little higher rate of taxation. I do not think that that will hit anybody much, but will make up to some extent for the loss that will be occasioned by the granting of abatements in the case of those whose incomes are between Rs. 1,000 and Rs. 2,000. I also agree with my friend the Hon'ble Mr. Subba Rao that the chief grievance in connection with the income-tax is the manner in which the tax is collected. The assessments are notoriously haphazard, and there is no real relief in the shape of appeals, as they are now heard. Some better machinery has got to be devised in order to give relief to those—and their number is large—who suffer from the vagaries of the assessing officers. If that were done, and if the principle of abatement were introduced with a higher rate for those who are above a certain limit, I think the requirements of the situation would be largely met."